



STATE OF HAWAII

DEPARTMENT OF BUDGET AND FINANCE

PUBLIC UTILITIES COMMISSION

LEGAL AD DATE: December 3, 2012

REQUEST FOR PROPOSALS

NO. RFP-PUC-13-01

SEALED PROPOSALS AND PRICING FOR AN
ENERGY EFFICIENCY POTENTIAL CONTRACTOR FOR THE
STATE OF HAWAII ENERGY EFFICIENCY POTENTIAL STUDY

WILL BE OPENED AT 3:00 P.M. (H.S.T.) ON

January 10, 2013

IN THE PUBLIC UTILITIES COMMISSION, KEKUANA OA BUILDING,
465 SOUTH KING STREET, ROOM 103, HONOLULU, HAWAII 96813. DIRECT
QUESTIONS RELATING TO THIS SOLICITATION TO BROOKE K. KANE,
TELEPHONE (808) 586-2020, FACSIMILE (808) 586-2066 OR E-MAIL AT
brooke.k.kane@hawaii.gov.

BROOKE K. KANE
Administrative Director

NOTICE TO INTERESTED PARTIES

This solicitation is provided to you for information purposes. If interested in responding to this solicitation, you may choose to submit your offer **provided** you register your company by fax or e-mail for this specified solicitation. If you do not register your company, you will not receive addenda, if any, and your offer will be automatically rejected and not considered for award.

Registration or Request for Copy of Solicitation

Submit FAX or E-MAIL to: FAX No.: (808) 586-2066
E-mail Address: brooke.k.kane@hawaii.gov

Provide the following information:

- Name of Company
- Mailing Address
- Telephone Number
- Facsimile Number
- Name of Contact Person
- E-Mail Address
- RFP Number
- FedEx (or equivalent) account number (documents will be sent by U.S. Postal Service first class mail if this is not provided)

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SECTION ONE **INTRODUCTION**

1.1 TERMS AND ACRONYMS USED HEREIN

“BAFO” means Best and Final Offer.

“BREG” means the Hawaii State Department of Commerce and Consumer Affairs, Business Registration Division.

"Commission" or "PUC" means the Public Utilities Commission of the State of Hawaii, as defined under HRS § 269-2.

“Consumer Advocate” means the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, as defined under HRS § 269-52.

“Contract Administrator” means the person designated by the State of Hawaii Public Utilities Commission to administer the contract for this solicitation.

“Cost Benefit Tests” means the cost-benefit tests outlined in the California Standard Practice Manual, Economic Analysis of Demand-Side Programs and Projects, October 2001 available at: www.energy.ca.gov .

"Contract Manager" means the Commission staff member designated by the State of Hawaii Public Utilities Commission to administer the contract between the Commission and the Energy Efficiency Potential Contractor.

"Contracting Officer" means the State of Hawaii Public Utilities Commission Chairperson.

"Contributing Entity" means an entity that implements programs or activities designed to produce energy efficiency savings that contribute to the EEPS.

“DLIR” means State Department of Labor & Industrial Relations.

“DOE” means U.S. Department of Energy.

“DOTAX” means Hawaii State Department of Taxation.

“DSM” means demand-side management.

“Energy Efficiency” means the savings of energy usage.

“Energy Efficiency Docket” means PUC Docket No. 05-0069.

"Energy Efficiency Portfolio Standard" or "EEPS" generally refers to a law that sets a standard of electricity use reduction to be achieved in incremental stages. For Hawaii, EEPS refers to the standard set forth by Act 155, Session Laws of Hawaii 2009, and promulgated as HRS § 269-96.

"Energy Efficiency Portfolio Standard Docket" or "EEPS Docket" means PUC Docket No. 2010-0037.

"Energy Efficiency Portfolio Standard Facilitator" or "EEPS Facilitator" means an entity contracted with the PUC to assist with PUC Docket No. 2010-0037.

"Energy Efficiency Portfolio Standard Framework" or "EEPS Framework" means the *Framework for Energy Efficiency Portfolio Standards* approved by the State of Hawaii Public Utilities Commission in Decision and Order No. 30089, filed January 3, 2012.

"Energy Efficiency Potential Contractor" or "Contractor" means the contractor selected to conduct an energy efficiency potential study.

"Energy Efficiency Potential Standard Technical Working Group" or "EEPS Technical Working Group" or "TWG" means a steering committee of members selected by the Commission to represent the Contributing Entities to the EEPS.

"Energy Efficiency Potential Study" means an assessment of energy efficiency potential as described in this RFP.

"Energy Efficiency Savings" means energy and capacity savings and incremental renewable energy production savings occurring in the State beginning January 1, 2009 and counting toward the EEPS goals. The savings may arise through activities of Contributing Entities or through naturally occurring conservation.

"EM&V" means evaluation, measurement and verification.

"EM&V Contractor (or Contractors)" means the entity (or entities) designated by the State of Hawaii Public Utilities Commission to provide independent evaluation services for the Hawaii Energy Efficiency Program HRS Chapter 269, Part VII.

"Ex Ante" means initial energy savings assumptions and parameters used to calculate Program accomplishments prior to any *ex post* evaluation.

"Ex Post" means evaluation conducted to assess program accomplishments or parameters after the installation of efficient measures and/or implementation of efficient practices.

"GC" means General Conditions, issued by the Department of the Attorney General.

"GET" means General Excise Tax.

"HAR" means Hawaii Administrative Rules.

"HCE" means Hawaii Compliance Express.

"Hawaii Clean Energy Initiative" or "HCEI" or "Energy Agreement" means a partnership between the State of Hawaii and the U.S. Department of Energy (DOE) that aims to have at least 70 percent of Hawaii's power come from clean energy by 2030.
<http://www.hawaiiicleanenergyinitiative.org/><http://www.hawaiiicleanenergyinitiative.org/>

"HECO" means Hawaiian Electric Company, Inc. HECO is a Hawaii corporation and a public utility as defined by HRS § 269-1. HECO was initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891. HECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu in the State of Hawaii.

"HECO Companies" or "HECO Utilities" means HECO, HELCO, and MECO.

"HECO Companies' service territory" means the islands of Oahu, Hawaii, Maui, Molokai and Lanai, which are serviced by the HECO Companies.

"HELCO" means Hawaii Electric Light Company, Inc. HELCO is a Hawaii corporation and a public utility as defined by HRS § 269-1. HELCO was initially organized under the laws of the Republic of Hawaii on or about December 5, 1895. HELCO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii in the State of Hawaii.

"HRS" means Hawaii Revised Statutes.

"H.S.T." means Hawaii Standard Time.

"HVAC" means heating, ventilation and air conditioning.

"IRP" means integrated resource planning.

"IRS" means Internal Revenue Service.

"IT" means information technology.

“KIUC” means Kauai Island Utility Cooperative. KIUC is a not-for-profit generation, transmission and distribution cooperative owned and controlled by the members it serves. Headquartered in Lihue, Kauai, Hawaii, the cooperative currently serves more than 32,000 electric accounts throughout Kauai.

“Load Management” means direct control or management of the load.

“MECO” means Maui Electric Company, Ltd. MECO is a Hawaii corporation and a public utility as defined by HRS § 269-1. MECO was initially organized under the laws of the Territory of Hawaii on or about April 28, 1921. MECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Maui; the production, transmission, distribution, and sale of electricity on the island of Molokai, and the production, distribution, and sale of electricity on the island of Lanai.

"Offeror" means any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a bid for the goods, service, or construction contemplated.

“PBF” means the public benefits fee established by the Commission, pursuant to HRS § 269-121, that includes money collected by Hawaii’s electric utilities from ratepayers to provide energy efficiency and demand side management programs and services by a third-party administrator, subject to Commission review and approval. The PBF may also include funding provided by other sources, including, but not limited to, funds from the federal government or private funding sources.

"PBFA Contract Manager" means the entity designated by the State of Hawaii Public Utilities Commission to administer the contract between the Commission and the Program Administrator for the Hawaii Energy Efficiency Program and EM&V Contractor retained to provide independent evaluation services for the Hawaii Energy Efficiency Program, HRS Chapter 269, Part VII.

“PBFA Program” means the Hawaii Energy program, which includes the third-party administered energy efficiency programs in the HECO Companies’ service territories, under HRS Chapter 269, Part VII.

“Program Administrator” or “PBFA” means the third-party administrator of the energy efficiency programs funded by the PBF in the HECO Companies’ service territories, selected by the Commission under HRS Chapter 269, Part VII.

"Procurement Officer" means the State of Hawaii Public Utilities Commission Administrative Director or other personnel so-authorized.

"Program Year" means a one-year implementation cycle for the Hawaii Energy Efficiency Program implemented by the Program Administrator. Currently, the programs are implemented from July 1 through June 30 of the following year.

"PV" means photovoltaic.

"RFP" means Request for Proposals.

"State" means State of Hawaii.

"Successful Offeror" means the offeror awarded a contract to conduct an Energy Efficiency Potential Study.

"Technical Reference Manual" or "TRM" means the technical description of all prescriptive and some custom energy efficiency measures and program assumptions. The Program Administrator maintains the TRM and coordinates any changes to the TRM with a technical advisory group. The Program Administrator shall provide an updated TRM annually, to the PBFA Contract Manager, the Consumer Advocate, and the Commission. The TRM serves as a basis for energy savings claims for the PBFA.

"Working day" means Commission office hours, every day from 7:45 a.m. to 4:30 p.m., Hawaii Standard Time, except Saturday, Sunday, and any Federal or State of Hawaii holiday.

"Workplan" means a detailed plan prepared by the Energy Efficiency Potential Contractor, describing analytic services to be provided during the proposed timeframe. The Workplan includes but is not limited to a detailed approach to each task for completing the Energy Efficiency Potential Study.

1.2 INTRODUCTION

The Public Utilities Commission, a Hawaii state agency administratively attached to the Department of Budget and Finance, is responsible for regulating all chartered, franchised, certificated, and registered public utility companies that provide electricity, gas, telecommunications, private water and sewage, and motor and water carrier transportation services in the State. The Commission intends to select a contractor to perform an Energy Efficiency Potential Study.

This RFP is being issued for an Energy Efficiency Potential Contractor who will be responsible for conducting independent evaluation of the energy efficiency potential available in Hawaii and providing additional services as needed.

In the event that additional evaluation services are requested, the Commission may elect to amend or modify the Energy Efficiency Potential Contractor's contract. Such a modification may entail revisions to the work scope, the budget,

or both. The Commission may also elect to retain one or more additional Contractors working on related projects.

This RFP provides estimated dates for the various events in the submission process, selection process, and performance of work. While these dates are subject to change, prospective Offerors must be prepared to meet them as they currently appear in this RFP. Any failure to meet a deadline in the submission or evaluation phases and any objection to the dates for performance in the work phase may result in the State refusing to consider the proposal of the Offeror.

1.3 OBJECTIVE

The objective of this RFP is to select an Energy Efficiency Potential Contractor who will assist the Commission in conducting independent assessment of energy efficiency potential, beginning on or by February 20, 2013 and extending through June 30, 2014, with an option to extend, by mutual agreement, for a period of time to be determined by the Commission. **However, the main deliverable, an Energy Efficiency Potential Study is to be completed by August 31, 2013** and any additional work would be follow-up to the main deliverable.

In order to provide the Commission with independent services and expertise, the Energy Efficiency Potential Contractor must be an individual or firm that is not directly engaged in implementing energy efficiency programs with the Program Administrator (PBFA), Hawaii electric or gas utilities, or with another agency of the State of Hawaii. If there is a potential conflict of interest, Offeror must disclose such conflict or potential conflict so that the Commission may make a determination regarding the suitability of Offeror serving as the Energy Efficiency Potential Contractor.

The Energy Efficiency Potential Contractor, if applicable, in conjunction with its subcontractor(s), must be able to conduct the Energy Efficiency Potential Study together with additional requested analyses. Refer to **Section 2** of this RFP for details.

Vendor qualifications should include extensive experience in all facets of energy efficiency and demand-side renewable energy analysis and forecasting, especially in conducting energy efficiency potential studies, and must possess strong analytic, oral and written communication skills.

1.4 BACKGROUND

The 2009 session of the Hawaii State Legislature enacted Act 155, codified as HRS § 269-96 (**Appendix 3**). The law calls for 30% reduction in energy use via efficiency by 2030 and directs the Hawaii Public Utilities Commission to establish incentives and penalties that foster compliance. It also increases the renewable portfolio standard to 40% by 2030.

In fulfillment of obligations associated with implementing HRS § 269-96, the Commission plans to conduct an energy efficiency potential study to assess available potential in the state.

The Commission issues this RFP soliciting proposals from entities that are interested in acting as the Energy Efficiency Potential Contractor to provide independent Energy Efficiency Potential Contractor services for the State of Hawaii.

This document presents the project objectives, terms and conditions, specific deliverables, and the required format to submit a proposal to the Commission. Potential Offerors should read the entire RFP carefully, along with its Appendices in order to gain a clear understanding of the project requirements. Offerors should note that **Section 1.1** of this RFP includes definitions of commonly-used terms in this RFP.

1.4.1 Overview of Institutional Structure

Potential Offerors will need to understand the roles and responsibilities of a number of important stakeholders in the Hawaii regulatory system, and in particular, their relationship to the Program. Offerors are referred to those documents for further background information. A brief discussion of the roles of a number of parties follows:

The Commission is a quasi-judicial body responsible for guiding the development of state utility policies that best serve the long-term interest of Hawaii utility ratepayers with the goal of the provision of high quality public utility service in Hawaii at reasonable costs. The Commission is also responsible for supervising the rates, quality of service and overall financial management of all Hawaii electric utilities.

The Consumer Advocate is a division of the State Department of Commerce and Consumer Affairs, and is required to represent, protect and advance the interests of all consumers of utility services in the state. It appears as the public advocate in proceedings before the Commission. It has been involved in the proposal of energy policy, advocacy for energy efficiency programs, and review of the energy efficiency program performance of Hawaii utilities. The Consumer Advocate also evaluates the utilities' services and performance, reviews proposals for service modifications and new programs or services, and makes recommendations to the Commission as appropriate.

The Contract Manager is the Commission staff member designated by the State of Hawaii Public Utilities Commission to administer the contract between the Commission and the Energy Efficiency Potential Contractor.

The Energy Efficiency Portfolio Standard Facilitator or “EEPS Facilitator” is the entity contracted with the PUC to assist with PUC Docket No. 2010-0037 and facilitation of the EEPS TWG.

HECO Companies or “HECO Utilities” are HECO, HELCO, and MECO. Energy efficiency programs in the HECO Companies’ service territories are administered by the PBFA. The HECO Companies will use information from the Energy Efficiency Potential Study in conjunction with their IRP processes.

KIUC is a not-for-profit generation, transmission and distribution cooperative owned and controlled by the members it serves. KIUC operates its own energy efficiency programs. It does not contribute to the PBF and is not directly involved with the PBFA. KIUC will use information from the Energy Efficiency Potential Study in conjunction with its IRP processes, and may use the information for program planning.

The Program Administrator or “PBFA” is responsible for delivering energy efficiency services throughout the HECO Companies’ service territories. The Program Administrator may deliver these services using its own staff or subcontractors or a combination thereof. An electric public utility or an electric public utility affiliate may be a subcontractor to the Program Administrator. The Program Administrator provides ongoing redesign and modification of these services and proposes new services for possible approval by the PUC. The Program Administrator is encouraged to develop its own innovative ideas and solicit ideas for new services from other sources. The Program Administrator is responsible for gathering and compiling relevant data in order to demonstrate the effectiveness of its service implementation. The Program Administrator must also interact with members of the public and numerous other organizations, including State agencies, Hawaii’s utilities, the Hawaii legislature, and national, regional, and local energy efficiency organizations.

The PBFA Contract Manager is an independent contractor to the Commission who will assist the Commission with the administration of the contracts with the Program Administrator and the PBFA EM&V Contractor (or Contractors).

The PBFA EM&V Contractor (or Contractors) are responsible for providing evaluation services related to, and conducting independent evaluation of, the PBFA Program. (One or more EM&V Contractors may also be engaged to provide evaluation services to the Commission or other entities, however the EM&V Contractor for the PBFA program is most relevant to the Energy Efficiency Potential Study).

1.4.2 Project History/Background

In January 2008 the State and the United States Department of Energy signed a Memorandum of Understanding to establish a long-term partnership with the

purpose of transforming the way in which renewable energy and energy efficiency resources are planned and used in the State. This partnership, referred to as the Hawaii Clean Energy Initiative ("HCEI")¹, set a goal for the State to meet 70% of its energy needs by 2030 through clean energy, with 30% coming from energy efficiency measures, and 40% coming from locally generated renewable sources.

On October 20, 2008, as a product of HCEI, the Governor of the State, the State Department of Business, Economic Development and Tourism ("DBEDT"), Consumer Advocate, and the HECO Companies entered into a comprehensive agreement ("Energy Agreement") designed to move the State away from its dependence on imported fossil fuels for electricity and ground transportation, and toward "indigenously produced renewable energy and an ethic of energy efficiency."

Section 12 of the Energy Agreement specifically addressed "energy efficiency," and stated "[i]t is the goal of all parties to ensure that Hawaii achieves the maximum possible levels of energy efficiency as it represents the most effective use of resources possible, including conservation by not using resources at all." To this end, the parties to the Energy Agreement committed to various measures to encourage adoption of energy efficiency, and specifically committed to "support the enactment of an energy efficiency portfolio standard at the 2009 session of the Legislature."

As contemplated in the Energy Agreement, the 2009 session of the State Legislature enacted Act 155, codified as HRS § 269-96 ("EEPS Law") (**Appendix 3**), which provides, in relevant part:

(a) The public utilities commission shall establish energy-efficiency portfolio standards that will maximize cost-effective energy-efficiency programs and technologies.

(b) The energy-efficiency portfolio standards shall be designed to achieve four thousand three hundred gigawatt hours of electricity use reductions statewide by 2030; provided that the commission shall establish interim goals for electricity use reduction to be achieved by 2015, 2020, and 2025 and may also adjust the 2030 standard by rule or order to maximize cost-effective energy-efficiency programs and technologies.²

Thus, the EEPS Law establishes an EEPS for Hawaii of 4,300 gigawatt hours ("GWh") of electricity use reductions statewide by 2030.

¹http://www.capitol.hawaii.gov/session2009/bills/GM772_.PDF

²HRS § 269-96 (a) and (b).

1.4.3 Energy Efficiency Portfolio Standards Framework

In Decision and Order No. 30089, filed on January 3, 2012, in Docket No. 2010-0037 (“Decision and Order No. 30089”), the Commission approved a Framework for Energy Efficiency Portfolio Standards “EEPS Framework” (see **Appendix 4**).

The EEPS Framework sets forth three metrics for measuring accomplishment toward the EEPS goal, over several performance periods (four periods over 22 years: 2009-2030 inclusive). The metrics are: annual GWh, percent of goal and percent of baseline. These goals are described further in the EEPS Framework Section B.

Table 1: First Performance Period Goals³

Year	GWh goal	% of baseline	% of forecast
2009	196.5	1.38	1.38
2010	196.5	1.37	1.37
2011	196.4	1.37	1.37
2012	196.4	1.37	1.37
2013	196.4	1.37	1.37
2014	196.4	1.37	1.37
2015	196.4	1.37	1.37
Total	1,375	9.6	9.6

³See Decision and Order No. 30089, Framework Section B.

Table 2: Second Through Fourth Performance Period Goals and Grand Total⁴

Second Performance Period			
Year	GWh goal	% of baseline	% of forecast
2016	195	1.36	1.36
2017	195	1.36	1.36
2018	195	1.36	1.36
2019	195	1.36	1.36
2020	195	1.36	1.36
Total	975	6.8	6.8
Third Performance Period			
Year	GWh goal	% of baseline	% of forecast
2021	195	1.36	1.36
2022	195	1.36	1.36
2023	195	1.36	1.36
2024	195	1.36	1.36
2025	195	1.36	1.36
Total	975	6.8	6.8
Fourth Performance Period			
Year	GWh goal	% of baseline	% of forecast
2026	195	1.36	1.36
2027	195	1.36	1.36
2028	195	1.36	1.36
2029	195	1.36	1.36
2030	195	1.36	1.36
Total	975	6.8	6.8
Grand Total -- First through Fourth Performance Periods			
Year	GWh goal	% of baseline	% of forecast
2030	4,300	30	30

⁴See Decision and Order No. 30089, Framework Section B.

Section E.2.a of the EEPS Framework provides that the goals will be met by Contributing Entities. There are two types of Contributing Entities: those regulated by the Commission (PBFA and utilities); and, those not subject to regulation by the Commission (contributions from local, state and federal governmental organizations and non-profits). Contributions from regulated entities include savings derived from energy efficiency programs (PBFA and KIUC); and, system improvements achieved by electric utilities. Contributions from non-regulated entities include savings derived from implementation of codes and standards, and from programs or other activities; a portion of savings on military bases and government buildings, for example, are also in this category. Section E.2 of the Framework describes strategies and approaches to meet the goal, including eligible measures.

Section 4.b. of the EEPS Framework sets forth the Commission's intent to develop an energy efficiency potential study.

As noted earlier, to make sound decisions regarding expenditures towards meeting EEPS, accurate information about electric energy savings potential and costs is needed. To this end, the Framework provides that updated potential studies for all utility service territories are necessary for EEPS planning purposes. For service territories where this information is not available or is not current, the [EEPS] Framework allows the commission to select an entity to perform a potential study. The [EEPS] Framework also lists a number of factors for inclusion in the updated potential studies.

In addition to fulfilling requirements of the EEPS Framework, the Energy Efficiency Potential Study will provide analyses that can be utilized by the Hawaii electric utilities (the HECO Companies and KIUC) in their IRP filings to identify and characterize energy efficiency resources available within their respective service territories for the IRP period.

The Hawaii electric utilities have conducted prior energy efficiency potential studies. The most recent such study conducted for the service territories of the HECO Companies was completed in 2008 and filed as an appendix to the IRP-4.⁵ KIUC has also conducted energy efficiency potential studies. Most recently, a study was completed in 2012.⁶

⁵HECO IRP-4: Energy Efficiency Study. Global Energy Partners, LLC. Lafayette, CA. 2008. Available at: http://www.heco.com/vcmcontent/IntegratedResource/IRP/PDF/AppendixN_HECO_IRP4_Final_GEP_DSM.pdf

⁶Kauai Island Utility Cooperative DSM Market Potential Assessment Final Report. Prepared for Kauai Island Utility Cooperative. KEMA Inc., Oakland, California. 2012. <http://website.kiuc.coop/content/2011-dsm-potential-study>

The Energy Efficiency Potential Study contemplated in this RFP will be the first statewide study to be conducted. Furthermore, new baseline building, equipment and appliance saturation data are being gathered at this time and will be available for use by the Energy Efficiency Potential Contractor for the Energy Efficiency Potential Study.

1.5 OFFICIAL MEANS OF COMMUNICATION

During the solicitation process for this RFP, all official communications with Offerors must be submitted in writing and directed to the Commission by facsimile, e-mail or mail. All communications and inquiries concerning this RFP should be addressed to:

Hawaii Public Utilities Commission
Attention: Brooke K. Kane, Administrative Director
465 South King Street, Room 103
Honolulu, Hawaii 96813
Telephone: (808) 586-2020
Facsimile: (808) 586-2066
E-mail: brooke.k.kane@hawaii.gov

Written inquiries must be received by the Administrative Director at the address identified above and shall state the page, paragraph, and line or sentence to which the question relates, when applicable. All written inquiries must be received by the deadline specified in **Section 1.7**.

Informal questions and responses over the telephone shall not be construed as an addendum to the RFP. Replies to Offerors' questions will be considered official only if (1) the PUC receives the questions in writing via facsimile, e-mail, or mail by the date specified herein; (2) the PUC provides a written reply; and (3) such questions and answers are made a part of the RFP by addendum.

Prospective Offerors shall receive a written response(s) that will be emailed and/or mailed to registered Offerors, provided that the Offeror's mailing address, contact telephone, and contact email address have been given to the PUC. The PUC shall not be responsible for notifying those potential Offerors who have failed to provide the necessary contact information by the registration deadline specified in Section 1.7. All written responses shall be issued as an addendum to the RFP and become, thereby, part of the RFP.

1.6 ISSUING OFFICE

This RFP is issued by the Commission. The Commission is the sole point of contact concerning this RFP.

1.7 RFP SCHEDULE – SIGNIFICANT DATES

The schedule for the work set out herein represents the State's best estimate of the schedule that will be followed. If a component of this schedule, such as *Closing Date – proposal due* is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Activity	Scheduled Dates
Advertisement of RFP	December 3, 2012
Registration Deadline and Deadline to receive written inquiries	December 14, 2012 (by 12:00 noon H.S.T.)
Issuance of responses to written inquiries and of RFP addenda (if applicable)	December 22, 2012
Closing date – proposal due	January 8, 2013 by 11:55 p.m. HST (mailing deadline); January 10, 2013 by noon HST (walk-in deadline)
Proposal review period	Through February 1, 2013
Optional discussions w/priority-listed Offerors	On or by January 23, 2012
If required, Best & Final Offers due	January 25, 2013 (mailing deadline)
Energy Efficiency Potential Contractor selection and award	On or by February 1, 2013
Contract negotiation	Through February 15, 2013
Contract Start date (work begins)	On or by February 20, 2013

Prospective Offerors should be aware of the specified time that an item is due, in addition to the date that it is due.

1.8 REGISTRATION REQUIREMENT

You **MUST REGISTER** your company by the date specified in **Section 1.7**, to ensure receiving any addenda that are issued. Registration shall include Company Name, Company Contact Person, Mailing Address, Contact Telephone Number, Contact Facsimile Number, and Contact E-mail Address and shall be submitted either by facsimile to the Commission to the attention of Brooke K. Kane, at (808) 586-2066 or by e-mail to brooke.k.kane@hawaii.gov. Telephone calls **WILL NOT BE HONORED**. Failure to register accordingly with the PUC will result in automatic rejection of your offer. It is the Offeror's responsibility to confirm that the Commission has received the faxed or e-mailed registration submittal.

Potential Offerors will receive a copy of the budget template (See **Appendix 5**) in MS Excel format once registered.

Potential bidders who wish to have their contact information distributed to other potential bidders for purposes of establishing teaming arrangements must indicate this preference together with their registration. This contact information will be distributed with the issuance of responses to written inquiries, see **Section 1.7**.

1.9 AUTHORITY

This RFP is issued pursuant to the provisions of the Hawaii State Procurement Code (HRS Chapter 103D), and the State Procurement Office's applicable Directives, Circulars, and administrative rules. All prospective Offerors are charged with the presumptive knowledge of all legal authorities. These and other pertinent materials are available on the State of Hawaii web site at www.spo.hawaii.gov. Submission of a valid executed offer by any Offeror shall constitute admission of such knowledge on the part of such Offeror.

Any agreement arising out of this RFP is subject to the approval of the State Department of the Attorney General, as to form, and to all further approvals as required by statute, administrative rule, order, or other directive.

1.10 GENERAL INSTRUCTIONS FOR PROPOSAL

The PUC wants clear and concise Proposals in response to this RFP. However, Offerors should take care to completely answer questions and meet this RFP's stated requirements.

Each Offeror may submit only one (1) proposal. Alternate proposal(s) will not be accepted.

Each Proposal must be organized in an indexed binder ordered in the same manner as identified in **SECTION THREE** of this RFP. The detailed requirements for the Proposal's contents and formatting are contained within this RFP.

Offeror shall submit one (1) unbound, indexed, original proposal marked "ORIGINAL," six (6) bound, indexed copies of the original marked "COPY," and two (2) copies on compact discs containing the proposal in electronic format. It is imperative to note that the Offeror submit only one original and the required number of copies. **DO NOT SUBMIT MORE THAN ONE ORIGINAL.**

Offers shall be submitted in a sealed envelope clearly identified with the RFP number, title, and Offeror's name on the outside of the envelope. The envelope shall be made to the attention of Brooke K. Kane, Administrative Director.

Offers shall be mailed to the PUC, as expeditiously as possible, at 465 South King Street, Room 103, Honolulu, Hawaii 96813, no later than the

date listed in **Section 1.7**. Timely receipt of offers shall be evidenced by the (trackable) mailed date (for proposals delivered by courier) or the PUC time stamp (for proposals delivered in person) on the Offerors' package(s). Proposals mailed or hand delivered after the corresponding deadline shall be disqualified upon receipt.

Copies of documents transmitted by Offerors via facsimile machines shall be limited to the Offeror registration, questions and modifications, or withdrawal of an offer pursuant to HAR §§ 3-122-108 and 3-122-28, respectively.

1.11 PURPOSE OF THIS RFP

1.11.1 Mandatory Requirements

Mandatory Requirements are explicitly stated within this RFP. Offerors should consider the following general mandatory requirements prior to deciding to respond to this RFP:

The Energy Efficiency Potential Contractor and subcontractors, if any, must be organization(s) independent of the Program Administrator, any Hawaii gas or electric utility, or any agency of the State.

The Energy Efficiency Potential Contractor must be prepared to act in an independent capacity and not as officers or employees of the State. The Energy Efficiency Potential Contractor must indemnify, defend and hold harmless the State and its officers and employees from liability and any claim, suit, judgment, and damages arising as a result of the Successful Offeror's acts and/or omissions in the performance of its duties.

The Energy Efficiency Potential Contractor must agree to multi-year contract with the State beginning on or by February 20, 2013 through June 30, 2014.

The Energy Efficiency Potential Contractor must possess extensive experience in evaluating energy efficiency potential including potential available through programs, codes and standards, and electric utility electric system upgrades. The Energy Efficiency Potential Contractor must also possess strong oral and written communication skills and analytic skills, knowledge of current and evolving trends in evaluation of energy efficiency programs and potential and a thorough understanding of the expected duties.

The Energy Efficiency Potential Contractor must propose a lead staff member who will coordinate the services of the Energy Efficiency Potential Contractor and serve as a single point of contact for all such services except as approved by and requested by the Contract Manager. The Energy Efficiency Potential Contractor shall NOT replace or alter the duties of key staff during the contract period without express written authorization, in advance, from the Commission.

The Energy Efficiency Potential Contractor must provide its own equipment, office space, and materials for this project.

The Energy Efficiency Potential Contractor must be familiar with Windows operating systems and the capability to store financial records pertaining to the Program and all evaluation services using Windows-based software or other tools or platforms as specified by the Commission. A secure backup system is also required.

1.11.2 Relationship of the Energy Efficiency Potential Contractor to the Commission

The relationship between the Energy Efficiency Potential Contractor and the Commission shall be governed by the contract entered into by and between the Energy Efficiency Potential Contractor and the Commission.

In order to preserve the Commission's quasi-judicial role, applicable rules, including the rule against ex parte communications under HAR § 6-62-29, shall apply as and when appropriate. Copies of any reports or other communications from the Energy Efficiency Potential Contractor to the Commission or vice versa (other than administrative matters concerning the Energy Efficiency Potential Contractor's own contract with the Commission) shall be available to the public upon request, unless deemed confidential pursuant to a protective order issued by the Commission under HAR § 6-61-50.

1.11.3 Relationship of the Energy Efficiency Potential Contractor to the Contract Manager

The Contract Manager shall manage the contract between the Energy Efficiency Potential Contractor (or Contractors) and the Commission. All day-to-day project activities, document and deliverable review, presentations, data collection and analysis, and other services provided by the Energy Efficiency Potential Contractor shall be managed by the Contract Manager.

Day-to-day activities of the Energy Efficiency Potential Contractor will be managed by the Contract Manager. All work products and deliverables (including interim deliverables and drafts) will be reviewed by the Contract Manager, must be completed to the satisfaction of the Contract Manager and for key deliverables, approved in writing by the Contract Manager in order to be considered complete.

The Contract Manager is also responsible for resolving disputes that arise over the performance of the Energy Efficiency Potential Contractor.

The Contract Manager shall have the ability to access all data, information and analyses used by and developed by the Energy Efficiency Potential Contractor.

1.12 PROPOSAL MODIFICATIONS AND WITHDRAWALS

Proposals may be modified or withdrawn prior to the deadline for submission of proposals (Closing Date and Best and Final Offer, if applicable, deadlines) listed in **Section 1.7** by the following:

Modifications: A written notice shall be sent by the Offeror and received by the Procurement Officer stating that a modification to a submitted proposal is being provided by the Offeror. The written notice must accompany the actual modification securely sealed in a separate envelope or container.

Withdrawal: A written notice shall be sent by the Offeror and received by the Procurement Officer. The withdrawal shall state that the Offeror wishes to withdraw a proposal that has already been received by the Procurement Officer.

Modifications and withdrawals shall be submitted in an envelope clearly identified with the RFP number, title, and Offeror's name on the outside of the envelope. The envelope shall also be made to the attention of Brooke K. Kane, Administrative Director, at the PUC, 465 South King Street, Room 103, Honolulu, Hawaii 96813. Timely receipt of modifications and withdrawals shall be evidenced by the post-mark date on or the on-line trackable mailed date of the Offerors' package(s). Modifications and requests for withdrawal received after the applicable deadline(s) shall be disqualified upon receipt.

1.13 SUBMISSION OF PROPOSAL

Submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of the performance of the work. Before submitting a proposal, each Offeror must:

- Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments and any other relevant documentation.
- Become familiar with State, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work specified herein.

1.14 COST OF RFP

The Offeror shall be responsible for all costs incurred in preparing or responding to this RFP.

The State will not be liable for any costs, including discussions, incurred by any Offeror in responding to this RFP, even if the State does not award a contract

through this process. The State may decide not to award a contract for the work. It may also cancel this RFP and contract for the work through some other process or by issuing another RFP.

1.15 PROPERTY OF THE STATE

All materials and documents submitted in response to this RFP shall become the property of the State and will not be returned.

SECTION TWO **SCOPE OF SERVICES**

2.1 INTRODUCTION

The Commission is committed to:

- Developing a thorough and independent assessment of the energy efficiency resource available to the State via Contributing Entities using allowable measures and activities per the EEPS Framework.
- Obtaining an Energy Efficiency Potential Study that provides guidance and insight regarding attainment of the EEPS goals via energy savings opportunities identified in the Energy Efficiency Potential Study.
- Providing estimates of available energy efficiency potential that can be used as a resource and included in IRP filings by the Hawaii electric utilities (the HECO Companies and KIUC).

2.1.1 Overview

The Commission seeks an Energy Efficiency Potential Contractor to develop an Energy Efficiency Potential Study assessing available potential from 2013-2030. As part of the evaluation services, the Energy Efficiency Potential Contractor will design and then implement a strategy to quantify the energy efficiency savings available to the State through activities conducted by Contributing Entities and through naturally occurring conservation. The Energy Efficiency Potential Contractor shall compare the available potential to the EEPS goals and make recommendations for the most effective approaches to capture the available potential. The Energy Efficiency Potential Contractor shall examine and comment upon the relationship between available energy efficiency potential and the goals and timeline for the EEPS.

The Energy Efficiency Potential Contractor is expected to develop a best in class, transparent, thoroughly-documented model and approach. It is critical, however, that the model and approach be “right-sized” and appropriate for the State, and that the model can be easily updated when new inputs become available. The Energy Efficiency Potential Contractor must “right size” the model and analyses by considering how the model and results will be used. The Commission seeks to develop an energy efficiency potential study that is easily understandable, transparent and avoids unnecessary complexity. The findings, reports and data developed by the energy efficiency potential study will support multiple activities including, but not limited to: fulfilling reporting requirements for the Commission, assessing available energy efficiency potential as compared to the EEPS goals, providing guidance to Contributing Entities regarding the best cost-effective

opportunities for capturing available energy efficiency, and providing information suitable for IRP filings.

The Energy Efficiency Potential Contractor will need to interact with a number of parties involved in the EEPS. These include the Commission, the Consumer Advocate, the EEPS Facilitator, PBFA, the PBFA Contract Manager, the EM&V Contractor, the HECO utilities, KIUC and other members of the TWG.

The Commission is ultimately responsible for the work of the Energy Efficiency Potential Contractor and thus will be the single client for the work of the Energy Efficiency Potential Contractor. However, the Commission considers positive interaction with all the parties to be a critical element of the success of the EEPS. The Energy Efficiency Potential Contractor will need to be part of this positive interaction while maintaining their independence.

2.1.2 Energy Efficiency Potential Contractor Budget

The Commission's intended not-to-exceed budget for the Energy Efficiency Potential Contractor is \$350,000.

2.1.3 Approach to Bid Preparation

The work scope defined in this RFP is at a fairly high level of generalization. Bidders are requested to propose their own approach to evaluation, giving careful consideration of the Commission's objectives and priorities, available budgets, and timeline for the Energy Efficiency Potential Study. Bidders should propose what they believe, given available budgets and time, are (a) realistic and achievable evaluation approaches, (b) appropriate resource allocations, and (c) appropriate levels of uncertainty in reported savings. Bidders are encouraged to frankly discuss trade-offs necessary to optimize the overall services in accordance with the Commission's objectives and priorities.

The Commission is looking for proposals demonstrating creativity, expertise and experience in how bidders approach the work scope and requested services – not necessarily a final approach. Specifically, the Commission is interested to learn how each bidder would use resources creatively to accomplish multiple objectives described in this RFP. “Right-sizing” the Energy Efficiency Potential Study methods and final products to best meet the Commission's goals is a critical component of the Study. The energy efficiency potential analyses and results must be based on solid, best-of-class analytic approaches, must be suited to Hawaii, must be transparent and easily updatable. Excessive complexity not suited to Hawaii's needs and preferences is to be avoided. The Commission expects robust analyses; a best-of class, transparent, well-documented method and approach; a flexible, updatable model; and information and analysis in a manner that is most useful for a variety of stakeholders in an evolving environment.

Once the Energy Efficiency Potential Study Contractor is selected, an initial task will be to prepare a Workplan with a detailed approach to the project including data requirements, modeling approach, final model specifications, analyses and a final report.

2.2 ENERGY EFFICIENCY POTENTIAL CONTRACTOR DUTIES

2.2.1 Objectives, Priorities, Tasks and Schedule

The Commission seeks an Energy Efficiency Potential Contractor to provide all necessary services to accomplish the objectives listed below and described throughout this RFP. The Commission seeks to maximize value for the State by engaging the Energy Efficiency Potential Contractor in performing a variety of duties related to producing an Energy Efficiency Potential Study. Since resources and time are limited, the Commission recognizes that tradeoffs are necessary.

The Commission's objectives, priorities and requirements for specific tasks may evolve over the course of time if the contract remains in place. The information provided next describes the Commission's current objectives, priorities, and the specific tasks envisioned for the Energy Efficiency Potential Contractor. However, the Commission retains the explicit right to alter its objectives, goals and specific tasks at any time throughout the contract period.

2.2.2 Energy Efficiency Potential Study Objectives

The overarching objectives for the Energy Efficiency Potential Contractor are as follows. ***The priorities must be addressed in the proposal, see SECTION THREE.***

1. Assess the short- mid- and long-term gross and net achievable market potential available for capture by Contributing Entities, from 2013-2030.
 - Annual kWh/GWh savings (net and gross)
 - Peak kW/GW savings (net and gross).

While the analysis of achievable energy efficiency potential will begin with 2013, certain reporting tables shall convey the potential that has been captured from January 1, 2009 through the present, in addition to the savings available in 2013 and beyond so that the entire period affected by the EEPS is characterized.

The EEPS is measured in terms of gross GWh savings from a January 1, 2009 baseline. Therefore gross savings represent the key metric of interest for EEPS purposes. However, additional objectives of the Energy Efficiency Potential Study are to provide insight and guidance to help Contributing Entities capture energy efficiency potential using a variety of approaches described in the EEPS

Framework, and to supply information for utility IRP filings. Thus, for certain entities net energy savings as well as net and gross peak savings and are also important, and shall be developed in the Energy Efficiency Potential Study.

Furthermore, while the Commission requests analyses through 2030, the Commission is aware that forecasts (including energy efficiency potential assessments) are less reliable in the outer years. Therefore the Commission requests special attention to the near-term availability of energy efficiency, through the first and second reporting periods (2015 and 2020).

2. Describe and characterize the available potential at three levels:

- **Technical Potential:** Technical potential is the amount of energy savings that would be possible if all technically applicable and feasible opportunities to improve energy efficiency were taken, including retrofit measures, replace-on-burnout measures, new construction measures, and feasible implementation of codes and standards.
- **Economic Potential:** The total energy efficiency potential available when limited to only cost effective measures and activities, including codes and standards.
- **Achievable Potential:** The amount of energy savings that could be expected to occur in response to a) specific assumptions regarding resources devoted to energy efficiency in Hawaii over time, and b) assumptions about market and other influences, including, but not limited to, implementation of codes and standards.

While all three types of energy efficiency potential are to be developed in the Energy Efficiency Potential Study, the Commission prefers that Achievable Potential be analyzed using straightforward scenarios rather than a myriad of complex assumptions.

The Energy Efficiency Potential Contractor shall characterize energy efficiency potential in formats including, but not limited to, tabular (including electronically usable data streams), with descriptive language in the Energy Efficiency Potential Study, and in terms of efficiency supply curves.

3. Develop a best-of-class, transparent and thoroughly documented energy efficiency potential model for the State. Activities include, but are not limited to:

- Analyze and report energy efficiency potential (including naturally occurring conservation) at the following levels of disaggregation:
 - Statewide

- Utility service territory (HECO, MECO, HELCO, KIUC) and by Island
- Contributing Entities:
 - Regulated entities (primarily programs)
 - Non-regulated entities (such as savings from codes and standards, military facilities, government buildings, etc.).

Results shall be delivered to the Commission in written formats, included in the Energy Efficiency Potential Study, and in electronic formats suited for analysis as needed. The software model and all data inputs and information needed to operate the model shall be delivered to the Commission.

4. Prepare a written report thoroughly and clearly describing the Energy Efficiency Potential Study, including background, methodologies, results and analyses. Several versions of the written report may be requested (e.g., a summary version for policy-makers). Thoroughly document all reports and interim deliverables in a manner and format that explicitly establishes a set of materials identifying clear methodologies, data sources and other sources of information to form a transparent, replicable, updatable infrastructure for assessing Energy Efficiency Potential in Hawaii. All of the inputs developed with ratepayer funding, including the software model, shall be delivered to the Commission in addition to all written reports.⁷
5. Develop and implement all phases of the Energy Efficiency Potential Study in a manner that produces results that maximize the usefulness of such information for a variety of stakeholders, recognizing that the Commission is responsible for all services provided by the Energy Efficiency Potential Contractor and that the Commission's needs, requirements and objectives shall govern all such activities. Additional stakeholders interested in evaluation research and results include, but are not limited to:
 - The Consumer Advocate
 - The EEPS Facilitator
 - The EEPS TWG.
 - The HECO utilities and KIUC for resource planning and other purposes

⁷Any issues relating to licensure or provision of proprietary software, should be addressed clearly in proposals, in particular, the essay questions.

- The Program Administrator (PBFA)
 - The PBFA Contract Manager
 - The PBFA EM&V Contractor.
6. Contribute information and analyses that enable the Commission to assess progress toward EEPS goals and that enable Contributing Entities to effectively target their activities to achieve the EEPS goal as quickly and as cost-effectively as possible.

2.2.3 Tasks for Conducting the Energy Efficiency Potential Study

The Tasks below describe specific activities designed to accomplish the Commission's objectives and priorities, discussed in previous sections.

2.2.3.1 Task 1: Workplan

The first task for the Energy Efficiency Potential Contractor is to develop a Workplan. However, prior to developing a draft and final Workplan, the Energy Efficiency Potential Contractor shall conduct initial assessments of data availability and stakeholder requirements. Five steps shall be involved: a Project Initiation Meeting, Data Review, Output Needs Assessment and Methodological Approach and Workplan Development.

1. Project Initiation Meeting

Upon execution of the contract, a project initiation meeting will be held to review the project, and initiate work. The Contract Manager will work with the Energy Efficiency Potential Contractor to prepare for the meeting.

Schedule and Deliverables – the Project Initiation Meeting will be held within approximately 14 days after execution of the contract. The Energy Efficiency Potential Contractor shall deliver an agenda and all meeting materials including meeting notes and a memorandum describing next steps.

2. Review the Data Sources Available for the Energy Efficiency Potential Study and Obtain All Additional Data Required
- EEPS Statute and EEPS Framework
 - Program accomplishments and program plans from the PBFA and KIUC
 - Additional savings information from the EEPS TWG, if any
 - PBFA TRM

- HECO 2012 Residential Appliance Saturation Survey preliminary results
- Data instruments, data gathering and analysis plans and preliminary results (if any) from the baseline building stock, appliance and equipment saturation studies being conducted in the HECO Companies' service territories by the EM&V Contractor (final results due March 2013)
- Data instruments, data gathering plans and preliminary results (if any) from baseline data collection undertaken in KIUC's service territory
- Estimates and other information on energy savings (if any) from non-regulated entities
- Prior energy efficiency potential studies
- PBFA EM&V reports
- Utility (HECO Companies and KIUC) IRP documents.

Upon execution of the contract, the Contract Manager shall begin providing available data sources to the Energy Efficiency Potential Contractor. The Energy Efficiency Potential Contractor shall assess available data and shall identify all additional data that are needed to complete the Energy Efficiency Potential Study. The Energy Efficiency Potential Contractor shall describe the results of this review, including additional data needs, in the Workplan.

Note that KIUC data regarding building stock, and appliance and equipment saturation data may be in a different form than data from the HECO Companies' service territories.

Schedule and Deliverables – The review of available data activity shall begin immediately upon contract initiation. The initial review shall be completed according to a schedule approved by the Contract Manager. A memorandum describing results of the data review, identifying additional data that are needed and proposing a plan for collecting these data, including data requests, shall be prepared. Finalizing the data review and obtaining additional data shall be completed according to a schedule and approach described in the Workplan.

3. Assess Output Needs and Formats

Based on discussions with the Commission, TWG and Contract Manager, and the results of the Project Initiation Meeting, the Energy Efficiency Potential Contractor shall identify required output analyses and formats for the Energy

Efficiency Potential Study results. The Energy Efficiency Potential Contractor shall describe the required outputs in the Workplan, providing examples.

Schedule and Deliverables – This activity shall begin during the Project Initiation Meeting with follow-up immediately thereafter according to a schedule approved in the Workplan. A memorandum describing output needs and formats shall be prepared and included as part of the Workplan.

4. Develop Analytic and Methodological Approach for the Energy Efficiency Potential Study

The Energy Efficiency Potential Contractor shall develop and propose an analytic and methodological approach to the Energy Efficiency Potential Study, based upon the data assessment and identification of output needs conducted per above. The methodological approach shall describe how available data will be used to produce results in the required output formats.

Schedule and Deliverables – This activity shall begin immediately upon completion of the Project Initiation Meeting. A memorandum describing the analytic and methodological framework shall be prepared and included with the Workplan.

5. Develop Draft and Final Workplan.

The Workplan shall describe in detail the Energy Efficiency Potential Contractor's approach to completing the Energy Efficiency Potential Study. The purpose of the Workplan is to provide in detail:

- A list of the activities that will be undertaken to complete the Energy Efficiency Potential Study
- Schedules, budgets, and staffing plans
- Interim and final deliverables, including data, software model and reports
- Reporting formats
- Detailed revision of the high-level summary and analytical approach presented in the Energy Efficiency Potential Contractor's original proposal. This material will build on the proposal and include information collected during the Project Initiation Meeting, intervening discussions, and meetings with the Contract Manager and other entities designated by the Contract Manager.

- Detailed project plan, including identification of staff resources and the management of sub-contractors, project schedule and visual presentation of tasks, sub-tasks, and milestones.
- Plans for data collection and analysis, including data requests and follow-up.
- Plans for contributing to the development of the Commission's transparent, well-documented analytic infrastructure. Such activities include, but are not limited to, locating and documenting reports or other data sources or contacts and providing them in forms or formats useful for the Energy Efficiency Potential Study; providing well-documented analyses and materials describing and providing procedures and materials used to develop analyses and results, providing expertise regarding best-of-class Energy Efficiency Potential Study approaches and other information as requested.
- Description of Energy Efficiency Potential Contractor's project and management milestones.
- Timeline and dates of deliverables and interim deliverables and activities.
- Detailed discussion of content and formats for all deliverables and interim deliverables, including data collection instruments, reports, memoranda, project management documents, electronic files, software model and all other work products or interim products.
- Description of the data and information needed from other entities (e.g., Program Administrator, HECO Utilities, KIUC, EEPS Facilitator, EM&V Contractor, ratepayers, etc.) with estimated dates that the data will be needed and plans for interactions to facilitate data and information transfer.
- Description of all coordination plans for interacting with other entities including, but not limited to, the Contract Manager, the Commission, the Program Administrator, the EEPS Facilitator, the PBFA Contract Manager, the HECO Utilities, KIUC, the EM&V Contractor, subcontractors, and other entities.
- Recommended modifications to the Commission's priorities and plans for the Energy Efficiency Potential Study.
- Description of the tradeoffs in allocating limited budget dollars to specific tasks and methodological emphases, and why those tradeoffs were selected.

- Supporting the HECO Utilities and KIUC in the updating of integrated resource plans.
- Supporting activities for entities involved with implementing the HCEI.
- Developing and designing materials needed for workshops, press conferences, reports, and case studies for distribution to general and technical audiences, as pertains to the Energy Efficiency Potential Study.
- Providing technical writing and editing as needed for a wide range of materials including presentation materials, reports, brochures, fact sheets, and newsletter articles, as pertains to the Energy Efficiency Potential Study.
- Preparing analyses, findings, and recommendations in response to inquiries from other entities as pertains to the Energy Efficiency Potential Study. Preparing support and presentation materials as needed for each inquiry.
- Providing technical expertise including written documents for hearings, workshops and other meetings, and preparing technical information for possible inclusion in meetings and reports, as pertains to the Energy Efficiency Potential Study.

Schedule and Deliverables – The draft Workplan shall be completed according to a schedule determined in the Project Initiation Meeting, and shall include all of the requested information, analyses and discussion. The final Workplan shall incorporate all comments provided by the Contract Manager, and other entities designated by the Contract Manager, and shall be delivered two weeks following receipt of such comments.

2.2.3.2 Task 2: Implement Analyses and Activities Described in the Workplan

The Energy Efficiency Potential Contractor shall conduct all required activities and analyses to complete the Energy Efficiency Potential Study, including development of a software model and delivery of a draft and final report (additional versions, e.g., summaries may be requested for different audiences). These analyses shall be designed to accomplish the Commission's objectives and shall incorporate all activities proposed in the Workplan.

Schedule and Deliverables – This activity shall begin immediately upon approval of the Workplan and shall be completed by August 31, 2013 with the final schedule to be determined in the Workplan.

2.2.3.3 Reports and Deliverables

For each evaluation activity described in the Workplan, the Energy Efficiency Potential Contractor shall report results and findings as follows, or in any other fashion requested by the Contract Manager. Interim reports and memoranda may be required and requested by the Contract Manager. Draft and final reports and presentations of results may be required in multiple formats for multiple audiences, at the request of the Contract Manager. The Energy Efficiency Potential Contractor must incorporate all comments on drafts provided by the Contract Manager and entities designated by the Contract Manager (and must supply in writing documentation describing the reason or reasons the comments could not or should not be incorporated) and must produce revisions in a timely fashion, as determined by the Contract Manager.

Schedule and Deliverables – The schedule and deliverables shall be completed according to dates described in the Workplan.

The Energy Efficiency Potential Contractor shall include ownership and disclaimer language in all reports. The Contract Manager will provide the language to be used.

2.2.3.4 Publication, Use and Presentation of Work

The Energy Efficiency Potential Contractor shall not publish, use, distribute, incorporate or in any fashion make use of information, data, materials, documents or reports analyses, or any other items, broadly construed, developed under or associated with this contract and or evaluation services rendered under this contract without prior written approval by the Contract Manager.

This requirement pertains to, but is not limited to, conference papers, publications, posters and reports. The Energy Efficiency Potential Contractor may develop and present such material only with prior written approval by the Contract Manager and only after draft and final documents have been reviewed and approved by the Contract Manager and entities designated by the Contract Manager. Sufficient review time must be provided to the Contract Manager, as determined by the Contract Manager. Authorship and other credits must include appropriate individuals or entities, as determined by the Contract Manager, including the Commission, Commission Staff, Contract Manager, other entities or individuals.

2.2.3.5 Task 3: Project Management

Under this task, the Energy Efficiency Potential Contractor is responsible for the following activities.

- Designating an Energy Efficiency Potential Study Contractor project manager who shall serve as the single point of contact for all evaluation services, with limited exceptions at the request of the Contract Manager.
- Ensuring that all the evaluation services and activities are implemented as documented in the Workplan and that project activities and reporting are completed according to the specifications and schedule documented or referenced in the Workplan.
- Ensuring that the Energy Efficiency Potential Contractor's contract management obligations are carried out in a professional and timely manner.
- Managing sub-contractors, if any.
- Maintaining regular and direct communication with the Contract Manager and with other entities as directed by the Contract Manager.
- Maintaining and archiving any and all electronic and paper files and data or information collected or developed during the performance of the evaluation work, final and interim deliverables. The documentation is the property of the Commission and shall be turned over to the Commission annually at timeframes designated by the Contract Manager. The archived files must be consistent and well-documented in a manner approved by the Contract Manager. The archive must be in a form and structure that supports a chain of evidence for all evaluation findings. The Energy Efficiency Potential Contractor shall focus specific resources on this task rather than assume that it will occur as a by-product of other activities. Electronic files, electronic and paper documents must be developed using consistent formats including intuitively clear and consistent filenames.
- Attending and occasionally facilitating in-person, telephone, or web-based meetings, regular and ad-hoc project meetings, and a final evaluation "close out" meeting. The Energy Efficiency Potential Contractor shall be responsible for preparing agendas, meeting materials, and meeting notes for all meetings, in a timely manner, allowing sufficient time for review by the Contract Manager, as determined by the Contract Manager.
- Project reporting is expected to include, but will not necessarily be limited to, the following items:
 1. Weekly Calls and Meetings with the Contract Manager – to discuss all project activities. Significant ad hoc calls shall also be required. However, the project team shall designate a specific time and day for bi-weekly calls and meetings.

2. Monthly – Project status reports highlighting issues with each evaluation activity and problems (successes or difficulties in getting the job done, with recommended or agreed solutions).
3. Quarterly – Review of major findings, observations, review of project implementation and recommended updates to the Workplan.
4. Ad-hoc – To document problems, resolution and urgent issues as they arise. These reports may also need to be linked to changes in work efforts. These may specifically include process evaluation reports and reporting of activities supporting other contractors' market or potential studies.
5. Invoices -- Monthly invoices must be provided in a timely manner. Invoices must be submitted with the monthly progress reports. Formats for invoices and progress reports shall be reviewed and approved by the Contract Manager and the Commission.

The Energy Efficiency Potential Contractor project manager, and, if desired, additional key personnel, shall attend at least two in-person meetings, at the Commission, 1) to meet with the TWG near project initiation, and 2) to present results of the Energy Efficiency Potential Study.

2.2.4 Availability

The Energy Efficiency Potential Contractor project manager and key staff shall be available by telephone, voicemail, pager, electronic mail (able to send and receive attachments of all types) and fax using software/hardware compatible with the Commission's software/hardware systems and preferences. The Energy Efficiency Potential Contractor shall be accessible to the Commission via the technologies listed above during, but not limited to, the hours: Monday through Friday, 7:45 a.m. through 4:30 p.m. (H.S.T.), and at other times to be determined by the Contract Manager and documented in the Workplan, responding to telephone calls, e-mail messages and other communications within ½ business day or less (allowing minimal, reasonable exceptions).

2.2.5 Confidential Information

It is possible that some of the information used by the Energy Efficiency Potential Contractor may be customer-specific or could provide an unfair competitive advantage to an entity delivering electricity or services in Hawaii. The Energy Efficiency Potential Contractor must safeguard any such confidential information using systems that provide appropriate protection in the collection, processing, storage and retrieval of such information.

2.2.6 Contract Terms

The contract with the Energy Efficiency Potential Contractor is expected to begin on or about February 20, 2013, and will last through June 30, 2014.

In the event the Commission chooses to contract with another vendor to provide the services of the Energy Efficiency Potential Contractor at the end of this contract term or upon cancellation of the contract, or if the Commission contracts with one or more additional Energy Efficiency Potential Contractors, the Energy Efficiency Potential Contractor must provide reasonable transition assistance to the Commission and cooperation with one or more Contractors at reasonable rates of compensation. Under no circumstances will the existing Energy Efficiency Potential Contractor have any right to compensation for investments or other expenditures that were undertaken pursuant to, or in anticipation of, the extension of the contract.

2.2.7 Property Owned by the State

All products of the Energy Efficiency Potential Contractor's work under this contract, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs and models, databases, e-mails, and similar documents or records, will be the sole property of the State and may not be copyrighted or resold by the Energy Efficiency Potential Contractor. Any equipment purchased by or furnished to the Energy Efficiency Potential Contractor by the State under this contract is provided on a loan basis only and remains the property of the State. At project completion, the Energy Efficiency Potential Contractor shall deliver all such materials to the Commission, organized and documented to ensure maximum usefulness.

2.3 COMPENSATION

Payment will be made to the Successful Offeror on a time and materials basis, not-to-exceed the total amount of the contract. Proposals shall include hourly rates and a total fixed cost for the various functions included in the proposal and an estimated cost for materials. The PUC or the State shall not be liable or responsible for any compensation to the Successful Offeror for the services provided under its proposal or in this project that is greater than the total contract amount. The Successful Offeror shall be paid in accordance with the State's General Conditions ("GCs") #17, to the extent modified and superseded by the PUC's Billing Requirements and Travel Guidelines. See **Appendix 1** for GCs and **Appendix 2** (Attachment S-6), for Billing Requirements and Travel Guidelines.

2.4 GENERAL RESPONSIBILITY TO COMPLY WITH STATE REQUIREMENTS

Unless otherwise provided in this RFP, the Successful Offeror will be responsible for obtaining all official licenses, approvals, clearances and similar authorizations required by any local, state, or federal agency for the work required in this RFP.

2.5 LEGISLATIVE AND REGULATORY CHANGES

The Commission reserves the right to amend the requirements of the Energy Efficiency Potential Contractor in response to legislative changes and regulatory changes imposed by the Commission that affect this RFP.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.1 INTRODUCTION

Offerors are required to present their proposals in accordance with this section. Proposals should be prepared simply and economically to provide a concise description of the Offeror's approach and capabilities for satisfying the required services outlined in this RFP.

It is important that proposals be complete. In the event an Offeror chooses not to respond to any section of the response format, the Offeror should then, in place of the appropriate section, indicate its reason for the omission of a response. In addition, Offerors should address any and all anticipated difficulties and problem areas along with potential approaches to their resolution.

Offerors may make certain assumptions or use simplifying conditions in their proposals. However, those assumptions or conditions must be clearly identified and the rationale behind them fully explained.

Offerors should provide one original and six (6) copies of their proposals, and two (2) compact discs or digital video discs, in a format that conforms to the following outline:

The following sections are also incorporated in the evaluation criteria set out in **SECTION FOUR**. Please refer to that section for further guidance in developing a proposal.

If any additional information is required by the State regarding any aspect of the Offeror's proposal, it shall be provided within two (2) business days.

The proposal shall be organized in the exact prescribed format using all titles, subtitles, and numbering, with each section being tabbed and separated into sections as listed below. The proposal shall include, without limitation, all of the information requested in this RFP in the order specified and pages must be numbered.

- Transmittal Letter
- Table of Contents
- Executive Summary
- Offeror Background, Organization and Staff Experience

- Technical Response
- Cost Proposal
- Managing Customer-Specific and Competitively Sensitive Information
- Assumptions and Expectations

The proposal submission shall comply with **SECTION ONE** above.

3.2 TRANSMITTAL LETTER

The transmittal letter must be included as part of the Offeror's technical proposal. The transmittal letter must be on the Offeror's official business letterhead and must be in the form of a standard business letter that is signed by an individual or individuals authorized to legally bind the Offeror.

The Transmittal Letter shall include the following:

3.2.1 Terms and Conditions

A statement indicating that the Offeror understands and will comply with all terms and conditions in the RFP.

3.2.2 Legal Entity

A statement indicating that the Offeror is a corporation or other legal entity (which must be specified, i.e., corporation, partnership, joint venture, etc.), and indicating the jurisdiction where the Offeror is organized.

3.2.3 Federal Tax ID No.

A statement setting forth the Offeror's Federal tax identification number ("I.D.").

3.2.4 Provider

A statement that the Offeror maintains an active and current certificate of registration as required by HRS § 103D-310. A true and certified copy of its certificate of registration must be provided and a State GET I.D. must also be provided. See **Section 5.12.4** for additional information and instructions.

The Successful Offeror will be required to assume responsibility for the life of the contract for all contractual activities, products, and deliverables identified in the RFP and offered in the Successful Offeror's accepted proposal whether or not the Successful Offeror directly performs or provides them.

Further, the Successful Offeror will be considered to be the sole point of contact with regard to contractual matters. If it is known that a part of the work is to be subcontracted or provided by a third party, the Successful Offeror's proposal shall include, at a minimum, the following information:

1. List of all known subcontractors, manufacturers, and other providers of products or services;
2. Names and addresses of all subcontractors, manufacturers, and other providers of products or services;
3. Description of work to be subcontracted and products to be provided by third parties;
4. Descriptive information concerning the organization of all subcontractors and third parties as well as resumes, including two (2) professional references, of subcontractor staff;
5. Descriptive information about the previous relevant experience of all subcontractors and third parties and their proposed staffs;
6. Descriptive information relating to the nature and duration of the previous relationship of all subcontractors and third parties with the Offeror; and
7. Explanation of any existing contractual relationships between the Offeror and subcontractors, or among subcontractors.

3.2.5 Subcontractor

If one or more subcontractors will be used, a statement shall be submitted by each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:

1. The general scope of work to be performed by the subcontractor; and
2. The subcontractor's willingness to perform the work indicated.

In addition, each subcontractor shall submit to the PUC, a tax clearance certificate from the DOTAX and the IRS showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the subcontractor have been paid.

If the Offeror chooses to subcontract any work required by this RFP within its proposal, the Offeror is responsible for including appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the Offeror and the State and to ensure that the State is

indemnified against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State and the Offeror. The Offeror shall expressly understand and agree that it shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The Offeror shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve it of the responsibility for providing the products/services as described and set forth herein, and in the contract. In addition, the activities performed by all subcontractors must be integrated with the operations of the Successful Offeror, such that the PUC perceives a single service entity.

The Successful Offeror must provide the State with notice prior to establishing any new subcontracting arrangements and before changing any subcontractors. The PUC reserves the right to require the Successful Offeror to replace subcontractors, as well as staff members, found to be unacceptable to the PUC for any reason.

3.2.6 Non-discrimination

A statement of affirmative action that the Offeror does not discriminate in its employment and collection practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, handicap, or disability.

3.2.7 Approval of Offeror's Recommendations

A statement that the Offeror agrees that the PUC reserves the right to disapprove Offeror recommendations without penalty, when they conflict with the policy or fiscal interests of the PUC, as determined by the PUC.

3.2.8 Contact Person

Include the name, email, and telephone number of a person who may be contacted during the evaluation process to discuss the Offeror's proposal.

3.2.9 Availability

This section shall describe the Offeror's availability in order to provide the services described in this RFP.

3.3 TABLE OF CONTENTS

Include a table of contents listing the individual sections of the proposal and their corresponding page numbers. Tabs should separate each of the individual sections listed in **Section 3.1**.

3.4 EXECUTIVE SUMMARY

The executive summary shall clearly and concisely summarize and highlight the contents of the proposal to provide the PUC with a clear and broad understanding of the entire proposal. The executive summary shall include all of the items below:

3.4.1 Benefits to the State

A brief synopsis of the overall benefits of the proposal to the State. This synopsis should not exceed three (3) pages in length and should be easily understandable.

3.4.2 Offer Form - OF-1

Refer to **SECTION SIX** of this RFP for the Offer Form.

3.4.3 Wage Certificate

Offeror shall complete and submit the attached Wage Certificate by which the Offeror certifies that the services required will be performed pursuant to HRS § 103-55. Refer to **SECTION SIX** of this RFP for the Wage Certificate form.

3.4.4 Evidence of Insurance

Current Certificate of Insurance. Refer to **SECTION 5.16** of this RFP for information on insurance requirements.

3.5 OFFEROR BACKGROUND, ORGANIZATION AND STAFFING

3.5.1 The Offeror Background and Staff Experience subsection shall address each item as follows:

3.5.1.1 Offeror Background

A separate section must be completed in the proposal for the Offeror. Background information on the Offeror and its size and resources shall cover the following:

1. Legal name of Offeror;
2. Physical address of principal place of business and all other offices including the location of the office which will perform work on behalf of the Commission;
3. Mailing address (if different from above);

4. Date established;
5. Ownership (public or private company, partnership, subsidiary, etc.);
6. Offeror's primary line of business;
7. Number of employees;
8. Number of employees engaged in tasks directly related to the requirements listed in this RFP;
9. History of company name changes and dates associated with each name; and
10. Location where incorporated or otherwise legally established.

3.5.1.2 Financial Stability and Financial Commitment

The Offeror shall provide information on the Offeror's financial stability, including the following: annual revenues over the last five (5) years (or the number of years the Offeror has been in business, whichever is less), number of employees for each of the last five (5) years, years in business, evidence of business insurance for professional liability, and financial references (which may include audited financial statements, compiled financial statements, and references from banking relationships).

The Offeror shall submit the Offeror's audited financial statements and annual reports, if any, for the last two (2) years. If unaudited financial statements are submitted, copies of filed tax returns shall be provided to support the statements.

As with trade secrets or other proprietary data, an Offeror may request in writing and in accordance with **Section 5.7** that the financial information provided be kept confidential. Otherwise contents of all proposals shall be made public as provided in HAR § 3-122-58, upon posting of award.

3.5.1.3 Offeror Performance

The Offeror shall provide information that will demonstrate the following:

1. Responsiveness to previous clients.
2. Timeliness of meeting schedules.
3. Adherence to contract requirements of previous clients.
4. Availability and accessibility to previous clients.

The Offeror must provide the following information relative to the past seven (7) years (or the number of years the Offeror has been in business, whichever is less):

1. Whether the Offeror has had a contract terminated for default or cause. If so, the Offeror must submit full details, including the other party's name, address, and telephone number.
2. Where the Offeror has been assessed any penalties in excess of \$10,000.00, including liquidated damages, under any of its existing or past contracts with any organization (including any governmental agency). If so, the Offeror must provide complete details, including the name of the organization, the reason for the penalty, and the penalty amount for each incident.
3. Whether the Offeror was the subject of any governmental action limiting the right of the Offeror to do business with that entity or any other governmental entity.
4. Whether trading in the stock of the company has ever been suspended with the date(s) and explanation(s).
5. Whether the Offeror, any officer of the bidder, or any owner of a 20% or greater interest in the Offeror has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.
6. Whether the Offeror, any officer of the bidder, or any owner of a 20% or greater interest in the Offeror has been convicted of a felony or is currently under indictment on any felony charge.

While an affirmative answer to any of these items will not automatically disqualify an Offeror from consideration, at the sole discretion of the evaluation committee, such an answer and a review of the background details may result in a rejection of the Offeror's proposal. The committee will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Offeror's performance of the work, and the best interests of the State.

3.5.1.4 Offeror Experience

The Offeror shall provide details of Offeror's and, if applicable, each subcontractor's relevant experience working as an Energy Efficiency Potential Contractor and conducting energy efficiency potential studies and related research. The proposal shall include a listing of the Offeror's experience working with State regulatory commissions or government entities in areas relative to the required work described in this RFP. Include a listing of experience obtained by

senior management employees or officers, who will be primarily assigned to perform or oversee the work described in the Offeror's proposal.

The Offeror must also include references for which the Offeror and each subcontractor has successfully provided services on projects that were similar in their nature, size and scope of work. Offerors, at a minimum must include a brief analysis of the degree of similarity in the nature, size, and scope of the services provided.

Refer to **SECTION SIX** of this RFP for the Vendor Reference form. The Offeror must use this form and fill it out completely for each reference. The forms may be recreated electronically, but all fields and formats must be retained. Failure to recreate the forms accurately may lead to the rejection of the Offeror's proposal. By listing the references, Offerors and their subcontractors grant the State authorization to contact these client references to assess the Offeror's quality of work performed.

3.5.2 Organization and Staffing

The organization and staffing subsection shall include organizational charts of proposed personnel and their job titles and responsibilities. The chart must describe the management approach and a detailed narrative describing who the key personnel are and how the key personnel's experience and educational background will enable them to successfully complete their assigned tasks. The Commission reserves the right to disqualify any potential Offeror that changes key personnel assigned to perform the Energy Efficiency Potential Contractor's responsibilities, prior to the execution of the contract.

Resumes of all key personnel assigned to the Energy Efficiency Potential Contractor must be included and should include information relating to each person's experience, education, and skills (including, but not limited to, specific degrees, dates, names of employers, and education institutions). Each resume shall be no more than three (3) pages in length. The Offeror should also indicate whether any or all of the key personnel have worked together as an Energy Efficiency Potential Contractor in the past.

The Offeror must also include references for which the Offeror's proposed key personnel has successfully provided management services on projects that were similar in their nature, size and scope of work.

3.6 TECHNICAL RESPONSE

The technical response section shall include a detailed discussion of the Offeror's approach to accomplishing the required work described in this RFP, including a work schedule to complete the required services for the energy efficiency programs administered by the Program Administrator, to commence on

or by February 20, 2013. It shall also describe the processes and procedures that the Offeror's proposed organization will follow and carry out the required work. The technical response must include responses to essay questions included in this section. The technical response section shall be limited to 20 pages in length.

This section must address the Energy Efficiency Potential Study Objectives, Schedule, and Tasks described in **SECTION 2**. The proposal should be developed in a format that addresses tasks described in **SECTION 2**.

Task 1: Develop Workplan

Task 2: Implement Services Described in the Workplan

Task 3: Project Management

Contents and Structure of the Technical Response

Offerors should focus their discussions in the technical response section on performing the tasks listed above and described in **SECTIONS 1 and 2**, in light of the Commission's objectives, budget, schedule and priorities, also described in **SECTIONS 1 AND 2**.

3.6.1 Essay Questions

Please respond to the following essay questions, 1-7. Answers should be approximately a page or less.

1. Describe Offeror's approach(es) to conducting energy efficiency potential analyses that examine potential effects of local, state and federal codes and standards, *and in military and other governmental facilities* in addition to programmatic activities offered by a variety of Contributing Entities.
2. Does the Offeror propose to conduct analyses at the measure, end-use or another level of disaggregation? What are the potential trade-offs for the proposed approach(es).
3. Discuss Offeror's proposed approach to "right-sizing" the Energy Efficiency Potential Study. Describe key analyses or data or approaches that would be employed in the study and those that would be considered excessively complex, and could be eliminated from the scope.
4. Discuss the usability of the software model that will be delivered as part of this contract and paid for with ratepayer funds. What will it take to update the model to include new data or other parameters?

Can such updates likely be undertaken by competent analysts not associated with your firm? Provide details regarding exactly what model, or portions thereof, will be delivered to the Commission, any licensure issues, including fees, that are or may be applicable. Describe the implications, if any, of using a proprietary software model.

5. Describe in Offeror's recommendations for conducting the Energy Efficiency Potential Study if budget was a) 50% larger AND b) if the budget was 50% smaller. Discuss trade-offs and recommendations that Offeror would make to modify the approach, and the affects on the Energy Efficiency Potential Study that would result, in BOTH of those situations.
6. Discuss the Offeror's availability and willingness to provide additional services, for example, follow-up analyses after completion of the Energy Efficiency Potential Study.
7. Provide any suggestions for crafting of the work that may differ from the specifications proposed in this RFP.

This section shall also include a discussion of any conflict of interest the Offeror may have in providing the services described in its proposal and any problems or concerns that the Offeror wishes to bring to the Commission's attention. OFFERORS SHOULD NOTE THAT CONFLICTS OF INTEREST MAY BE GROUNDS FOR DISQUALIFICATION FROM CONSIDERATION.

3.7 COST PROPOSAL

3.7.1 Contract Management

Offerors should provide fixed cost proposals based on an hourly rate for services (or where appropriate, a unit rate, e.g., data collection) to be performed under the contract.

The budget template (see **Appendix 5**) will be provided to potential Offerors in MS Excel form upon registration (See **Section 1.8**). Offerors' cost proposals MUST be submitted in the format provided in **Appendix 5** and MUST be provided within the proposal itself in a readable printed form, **AND** electronically as a MS Excel spreadsheet. One or more pages of information describing the information, the crafting of certain cost or categories, markups, etc. shall be described clearly.

Include labor information for prime contractor staff (and subcontractors, if any).

Offeror shall clearly identify mark-ups, if any, on subcontractor labor and other services.

Offerors should detail costs for any and all materials not included in the hourly labor rate.

Offerors' proposals should clearly separate start-up costs (such as software purchases and system development costs) from ongoing operational costs.

Offerors' proposals should include costs (i.e. time and travel) associated with the meetings scheduled with the Commission, the Contract Manager, and stakeholders in Honolulu, Hawaii, during the contract term. This provision applies to travel for project management and presentation purposes. These meetings are anticipated to occur two times during the contract: near project initiation and following the completion of the Energy Efficiency Potential Study. The Project Manager must attend these meetings and may elect to bring other key staff as an option.

Offerors must include information in their proposals regarding the items and services included in data collection, e.g., travel and lodging, materials and rentals, etc. if any, to aid reviewers in assessing and understanding the budget proposal.

Offerors must be very specific regarding any materials (e.g., metering equipment) proposed for purchase or inclusion in the materials budget.

3.8 MANAGING CUSTOMER-SPECIFIC AND COMPETITIVELY SENSITIVE INFORMATION

The Offeror must include a proposal for managing customer-specific and competitively sensitive information, which at a minimum:

1. Ensures that customer-specific and competitively sensitive information is provided only to those entities that require the information as approved by the Commission;
2. Requires each entity and individual receiving the information under (1), immediately above, to first sign a protective agreement prohibiting disclosure to unauthorized entities or personnel;
3. Applies such standards and safeguards to all customer-specific information; and
4. Includes criteria and a process for identifying and applying such standards and safeguards.

3.9 ASSUMPTIONS AND EXCEPTIONS

The Offeror shall list any assumptions made and exceptions taken to the terms, conditions, specifications, or other requirements listed here. The Offeror shall reference the RFP section where assumption is made or exceptions are taken, a description of the assumption made or exception taken, and the proposed alternative, if any. Any revision or exception to the work or work products requested shall also be supported by a description of the proposed benefit to the State, if considered.

Further, the Offeror must state that there are no further assumptions or exceptions related to meeting requirements of the RFP other than those enumerated in this section of the proposal. **Offeror is advised that any assumptions made or exceptions taken may adversely affect Offeror's evaluation score.**

SECTION FOUR **PROPOSAL EVALUATION**

4.1 INTRODUCTION

The evaluation of proposals received in response to this RFP will be conducted comprehensively, fairly, and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

4.2 EVALUATION ORGANIZATION

A committee of at least three (3) State employees selected by the PUC will review and evaluate all proposals submitted by the deadline specified in the RFP. The evaluation committee will include individuals with experience in and knowledge of the PUC's duties, powers, objectives and requirements and the specific requirements set forth under HRS Chapter 269.

The evaluation committee may have the proposals or portions of them reviewed and evaluated by the Contract Manager, other State personnel or Commission consultants with technical or professional experience that relates to the EEPS or to a criterion in the evaluation process.

All proposals will be initially reviewed for timeliness of submission, format, and completeness. The proposals that meet the initial requirements of the RFP shall then be fully evaluated according to the criteria listed below. Proposals that only meet a portion or none of the initial requirements shall be rejected and disqualified from further review or consideration unless the Procurement Officer deems that initial requirement deficiencies are minor or may be clarified and corrected without resulting in an unfair advantage to the Offeror and it is in the best interest of the State to not reject or disallow the proposal.

Overall, the proposal shall demonstrate that the Offeror understands the issues and has the ability to meet and satisfactorily produce all contractual requirements listed in the RFP, including all contractual services. The price must be realistic given the work plan, and must illustrate an aggressive, competitive approach to maximizing the State's limited resources. The evaluation will be conducted in six (6) phases:

Phase 1 – Evaluation of General Requirements

Phase 2 – Evaluation of Proposals

Phase 3 – Establishment of Priority List of Offerors

Phase 4 – Optional Discussions/Presentations with Priority-listed Offerors

Phase 5 – Submission of Best and Final Offers (if deemed necessary by the PUC)

Phase 6 – Recommendation for Award

4.2.1 Evaluation Categories and Thresholds – (Total Points – 100)

<u>EVALUATION CATEGORIES</u>	<u>POSSIBLE POINTS</u>
General Requirements	Pass/No Pass
Proposal	
Understanding of the Energy Efficiency Potential Contractor's Role and the State's Needs	10 points
Offeror Background, Organization & Staffing	30 points
Technical Response (including proposed approach(es) and responses to essay questions)	45 points
Cost Proposal	15 points
TOTAL POSSIBLE POINTS	100 POINTS

4.3 PHASE 1 – EVALUATION OF GENERAL REQUIREMENTS – (Pass/No Pass)

The evaluation of the general requirements as specified herein shall be on a “pass/no pass” basis. No points shall be assigned for these requirements. The purpose of this phase is to determine whether an Offeror’s proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the general requirements (“no pass”) will be grounds for deeming the proposal non-responsive to the RFP and may result in non-consideration of the proposal. Proposals meeting the general requirements (“pass”) of Phase 1 will be considered in Phase 2.

The proposal shall be organized in the exact prescribed format using all titles, subtitles, and numbering, with each section being tabbed and separated into sections as listed below. Offeror shall include, without limitation, all of the information requested in this RFP in the order specified and pages must be numbered.

GENERAL REQUIREMENTS FOR THE PROPOSAL	
	Transmittal Letter
	Table of Contents
	Executive Summary
	Offeror Background, Organization and Staffing
	Technical Response
	Cost Proposal
	Assumptions and Expectations

4.4 PHASE 2 – EVALUATION OF PROPOSALS – (100 TOTAL POSSIBLE POINTS)

During this phase, the evaluation committee shall conduct evaluations on the Offeror's proposal, against requirements specified in this RFP.

Based on a 100-point scale, proposals must score a minimum of 70 points for further award consideration. Proposals scoring less than 70 points shall not be considered for project award.

4.4.1 Understanding of the Energy Efficiency Potential Contractor's role and the State's Needs – 10 Points

Proposals will be evaluated against the following criteria:

- Has the Offeror demonstrated a thorough understanding of the purpose and scope of the Energy Efficiency Potential Contractor's responsibilities?
- How well has the Offeror identified pertinent issues and potential problems?
- Has the Offeror demonstrated that it understands the importance of timeliness and has the ability to meet the reporting deadlines to the Commission?

4.4.2 Offeror Background, Organization & Staffing – 30 Points

The Commission will evaluate the experience, performance, resources, and qualifications of the Offeror and subcontractors (if any). References will be verified and findings incorporated into the evaluation.

4.4.2.1 Offeror Background

Background information provided about the Offeror and its size and resources will be evaluated by the Commission, including whether or not the Offeror has provided sufficient general background information to make such an evaluation.

4.4.2.2 Financial Stability and Financial Commitment

The Commission will evaluate the financial condition of the Offeror to determine whether, in its opinion, the Offeror has sufficient financial resources to meet all terms of the contract.

Specifically, the proposal will be evaluated against the following criteria:

1. Has the Offeror submitted financial statements that provide sufficient reliable information to determine the financial condition of the Offeror?

4.4.2.3 Offeror Performance

As part of the evaluation of the Offeror's experience, the committee will evaluate relevant performance references to determine:

1. Has the Offeror been responsive to previous clients?
2. Has the Offeror been timely in meeting deliverables?
3. Does the Offeror adhere to contract requirements of previous clients?
4. Availability and accessibility of resources to previous clients.

4.4.2.4 Offeror's Experience

The committee will evaluate the Offeror's experience in acting as an Energy Efficiency Potential Contractor in similar circumstances.

4.4.2.5 Organization & Staffing

Offeror's proposed organization and staffing resources will be evaluated to assess the Offeror's capability to carry out the duties and responsibilities of the Energy Efficiency Potential Contractor.

The evaluation committee will evaluate the key management personnel and other key personnel proposed for the Energy Efficiency Potential Contractor's responsibilities, based on experiences listed under the individual resumes.

References for the proposed individual(s) assigned to this proposed project will be checked and included in the evaluation of this section. Reference checking is not limited to only those references supplied by the Offeror.

4.4.3 Technical Response – 45 Points

Evaluation criteria for this section will assess the Offeror's approach to the Energy Efficiency Potential Contractor's responsibilities. Specifically, proposals will be evaluated against the following criteria:

- Understanding of state and federal laws, regulations, policies and procedures; and
- Adequacy of approach to meeting the requirements specified in scope of work
- Response to essay questions.

4.4.3.1 Understanding of State and Federal Laws, Regulations, Policies and Procedures.

Proposals will be evaluated for the adequacy of the Offeror's understanding of state and federal laws, regulations, policies and procedures relating to the Energy Efficiency Potential Contractor's responsibilities. Such requirement may affect the ability of the timeliness of the tasks of the contract. The evaluation committee must be assured that the Offeror is capable of dealing with the requirements of State and federal laws.

4.4.3.2 Adequacy of Approach to Meeting the Requirements Specified in Scope of Work.

The evaluation committee will evaluate the adequacy of the approach proposed to satisfy the requirements specified in the scope of work.

This area of evaluation includes an assessment of the detailed work plan, including the logic of the work plan, the interfacing with the Commission and the Contract Manager, and realism of the tasks and schedules.

In addition, this part of the evaluation assesses the Offeror's approach to management and control methods and tools to successfully operate as the Energy Efficiency Potential Contractor described in its proposal.

The Offeror shall address, and proposals will be evaluated against, the following criteria:

- Management approach;
- Authority of the manager (if any);

- Project control approach (including demonstrated previous use of control methods and tools to successfully provide service);
- Approach to interfacing with the Contract Manager;
- Approach to ensuring completion of tasks and fulfillment of responsibilities;
- Ensuring security; and
- Clarity of work assignments and organizational roles, responsibilities, and authorities.

4.4.4 Cost Proposal – 15 Points

The evaluation committee will analyze the Offeror's proposed cost utilizing a numerical rating system. Of the qualifying proposals, the one with the lowest hourly price will be awarded the maximum possible points for this component. Other proposals will be awarded points for this component equal to the lowest proposed price multiplied by the maximum possible points for this component, divided by the higher proposed price.

In addition, the cost proposal must address any non-required scope of work, in which the Offeror chooses to provide within its proposal, as a separate cost from the hourly cost proposal.

4.5 PHASE 3 – ESTABLISHMENT OF PRIORITY LIST OF OFFERORS

The evaluation committee scores for each proposal, as determined in Phase 2 – Evaluation of Proposals, shall be ranked and averaged to determine if the proposal is acceptable, potentially acceptable or unacceptable. No more than three (3) acceptable or potentially acceptable proposals with the highest average ranking will be designated as the priority-listed Offerors, as set forth under HAR § 3-122-53.

4.6 PHASE 4 – OPTIONAL DISCUSSIONS WITH PRIORITY-LISTED OFFERORS

During the course of this phase, the PUC may conduct discussions only with priority-listed Offerors. Proposals may be accepted without such discussions. These discussions are intended to answer any questions the evaluation committee may have regarding a priority-listed Offeror's proposal. The content and extent of each discussion will be determined by the committee's evaluation of the deficiencies in each proposal. The evaluation committee will not indicate to a priority-listed Offeror a price that it must meet in order to obtain further consideration nor will it advise a priority-listed Offeror of its price standing relative

to another priority-listed Offeror. However, the evaluation committee may inform a priority-listed Offeror that its price is considered too high or unrealistic.

The evaluation committee will attempt to disclose all deficiencies noted in the priority-listed Offerors' proposals. These deficiencies may include: proposed personnel considered to be unqualified, unrealistically low or high pricing, unrealistically low or high estimated efforts, and questionable technical or management approaches. The intent of the discussions is NOT to initiate a pricing or service auction, but rather to give the Offeror the opportunity to clarify or correct proposal deficiencies.

If during the discussions there is a need for any substantial clarification or change of the RFP, the RFP shall be amended by an addendum. Such addenda to the RFP shall be distributed only to the priority-listed Offerors. The priority-listed Offerors shall be permitted to submit new proposals or amend those submitted.

The evaluation committee may request the Contract Manager, other State personnel or Commission consultants, with technical or professional experience that relates to analysis of energy efficiency potential to participate in this process.

4.7 PHASE 5 – SUBMISSION OF BEST AND FINAL OFFERS (if deemed necessary by the Commission)

The priority-listed Offerors' best and final offers, if required, must be mailed by the priority-listed Offeror no later than the date and time specified in the RFP Schedule in **Section 1.7**. If a best and final offer is not submitted, the previous submittal will be construed as the best and final offer. Six (6) bound, indexed copies and one single-sided unbound, indexed original of the best and final offer must be submitted. In addition, two (2) copies on compact discs or digital video discs containing the best and final offer in electronic format must be submitted. After best and final offers are received, final evaluations will be conducted for an award.

4.8 PHASE 6 – RECOMMENDATION FOR AWARD

The evaluation committee will prepare and submit a recommendation on which Offeror should be awarded the contract for the Procurement Officer's review and approval.

SECTION FIVE **SPECIAL PROVISIONS**

5.1 SCOPE

The Offeror's proposal shall be in accordance with the RFP in its entirety; including these Special Provisions and the General Conditions included by reference in **SECTION SEVEN** of this RFP.

5.2 TERM OF CONTRACT

The Successful Offeror shall be required to enter into a formal written State contract to commence work on this project.

The term of contract shall begin on the agreement start date specified in **Section 1.7**, and continue through June 30, 2014, with an option to extend, by mutual agreement, for a period of time determined by the Commission. The PUC may terminate the contract period at any time, if in the best interest of the State.

5.3 OVERVIEW OF THE RFP PROCESS

1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS § 103D-303.
2. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
3. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

4. A committee of at least three (3) State employees selected by the PUC shall evaluate the proposals in accordance with the evaluation criteria in **SECTION FOUR**. The committee may have the proposals or portions of them reviewed and evaluated by independent third parties or other State personnel with technical or professional experience that relates to the Program or to a criterion in the evaluation process. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. This review will be a pass/no pass determination with no points assigned.

5. Proposals may be accepted on evaluation without discussion. However, if discussions are deemed necessary, prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list shall be limited to a maximum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.
6. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority-listed Offerors who submit acceptable or potentially acceptable proposals.
7. Following any discussions, Priority-Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or the committee reserves the right to have additional rounds of discussions with the priority-listed Offerors prior to the submission of the BAFO.
8. The date and time for Offerors to submit their BAFO, if any, is indicated in **Section 1.7, RFP SCHEDULE - SIGNIFICANT DATES**. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.
9. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in **SECTION FOUR**, the committee will make its recommendation to the Contracting Officer. If approved by the Contracting Officer, the Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in **SECTION FOUR**.
10. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once the award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the Commission agree are confidential and proprietary should be identified by the Offerors and shall be excluded from access.
11. The Contracting Officer or the committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer and the committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.

12. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

5.4 RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of § 103D-310(c), HRS:

- Chapter 237, tax clearance;
- Chapter 383, unemployment insurance;
- Chapter 386, workers' compensation;
- Chapter 392, temporary disability insurance;
- Chapter 393, prepaid health care; and
- Chapter 103D-310(c), Certificate of Good Standing ("COGS") for entities doing business in the State

Refer to **SECTIONS 5.12 and 5.16** for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

Although proof of compliance with these requirements is required prior to entering into a contract with the Commission, due to the compressed timeline of this RFP, it is highly recommended that Offerors furnish this proof of compliance with their proposal.

5.5 PROPOSAL PREPARATION

5.5.1 OFFER FORM - OF-1

Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate spaces on Offer Form OF-1. Failure to do so may delay proper execution of the contract. See Attachment 1 of **SECTION SIX** of this RFP for the Offer Form.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

5.5.2 Offer Guaranty

An offer guaranty is NOT required for this RFP.

5.5.3 Tax Liability

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237 and vendors are advised that they are liable for the GET. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

5.5.4 Wage Certificate

The Successful Offeror shall complete and submit the attached Wage Certificate by which Successful Offeror certifies that the services required will be performed pursuant to HRS § 103-55. See Attachment 2 of **SECTION SIX** of this RFP for the Wage Certificate form.

5.6 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the PUC at least one week prior to the proposals due date. This will allow issuance of any necessary amendments to the RFP. It will also help prevent the opening of a defective solicitation and exposure of Offeror's proposal upon which award could not be made.

5.7 CONFIDENTIAL INFORMATION

If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer should be so advised in writing and provided with justification to support the confidentiality claim. Compensation methodology is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential, pursuant to HAR § 122-46(9). Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

If a person requests to inspect the portions of an Offeror's proposal designated as confidential, pursuant to HAR § 3-122-46(9), the inspection shall be subject to written determination by Attorney General for confidentiality in accordance with

HRS Chapter 92F consistent with HAR § 3-122-58. If the request for confidentiality is denied by the Attorney General, such information shall be disclosed as public information, unless the person requesting that such information be determined confidential appeals the denial to the Office of Information Practices in accordance with HRS § 92F-42(1).

5.8 CANCELLATION OF RFP AND PROPOSAL REJECTION

The State reserves the right to cancel this RFP and seek to perform the proposed scope of work through a new RFP or other means when it is determined to be in the best interest of the State, pursuant to HAR § 3-122-96.

The State also reserves the right to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, including that the State believes the proposal is excessive in price.

The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

5.9 DISQUALIFICATION OF PROPOSALS

The State reserves the right to consider acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the problems involved and the scope of work. Any proposal offering any other set of terms and conditions, or terms and conditions contradictory to those included in this RFP, may be disqualified without further notice.

An Offeror will be disqualified and the proposal automatically rejected for any one or more of the following non-exclusive reasons:

- Proof of collusion among Offerors, in which case all proposals and Offerors involved in the collusive action will be rejected.
- The proposal demonstrates noncompliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- The proposal has any provision reserving the right to accept or reject award, or to enter into an agreement pursuant to an award, or provisions contrary to those required in the solicitation.

- The delivery of the proposal after the deadline specified in the timetable.
- The Offerors being in arrears on existing contracts with the State or having defaulted on previous contracts.

5.10 RIGHT TO WAIVE MINOR IRREGULARITIES

The evaluation committee reserves the right to waive minor irregularities. The evaluation committee also reserves the right to waive general requirements provided that all the otherwise responsive proposals failed to meet the general requirements and the failure to do so does not materially affect the procurement. This right is at the sole discretion of the evaluation committee.

5.11 OFFER ACCEPTANCE PERIOD

The State's acceptance of offer, if any, will be made within ninety (90) calendar days after the opening of proposals. Offeror's proposal shall remain firm for the ninety (90) day period.

5.12 AWARD OF CONTRACT

5.12.1 Method of Award

The award, if any, shall be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in this RFP.

5.12.2 Responsibility of Successful Offeror – Reference to HRS § 103D-310(c).

If compliance documents have not been submitted to the Commission prior to award, the Successful Offeror shall produce documents to the Procurement Officer to demonstrate compliance with this section.

The Successful Offeror shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of the work specified herein prior to commencing work under this contract; shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.

5.12.3 Timely Submission of all Certificates.

The required certificates should be applied for and submitted to the Commission as soon as possible. If a valid certificate is not submitted on a timely basis for a award of contract, an Offeror otherwise responsive and responsible may not receive the award.

5.12.4 Hawaii Compliance Express

In lieu of requesting individual compliance documents, Offerors may expedite the process by utilizing the Hawaii Compliance Express ("HCE"), which can provide a "Certificate of Vendor Compliance" for your business entity. Businesses register online through a simple wizard interface at <http://vendors.ehawaii.gov>. The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of HRS § 103D-310(c) shall be accepted for both contracting purposes and final payment. Vendors that elect to use HCE services will be required to pay an annual fee to the Hawaii Information Consortium, LLC (HIC). HCE can be accessed online at <http://vendors.ehawaii.gov/hce/splash/welcome.html>.

It is strongly recommended that vendors utilize HCE. Vendors choosing not to participate in the HCE program will be required to provide each of the paper certificates as instructed below.

5.12.5 HRS Chapter 237 Tax Clearance Requirement for Award

Instructions are as follows:

Pursuant to HRS §103D-328, the Successful Offeror shall be required to submit an **original** tax clearance certificate issued by the Hawaii State Department of Taxation ("DOTAX") and the Internal Revenue Service ("IRS"). **Offerors are urged to submit a valid tax clearance certificate together with their proposals.** If this is not feasible, the certificate should be applied for at DOTAX or the IRS and submitted to the Commission as soon as possible. If a valid certificate is not submitted on a timely basis prior to award of the contract, an offer otherwise responsive and responsible may be rejected and not considered for award.

The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the Commission.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2006), which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms): http://www.hawaii.gov/tax/a1_1alphalist.htm

DOTAX Forms by Fax/Mail: (808) 587-7572
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX:	(808) 587-1488
IRS:	(808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to the Commission. However, the tax clearance certificate shall be submitted to the Commission.

5.12.6 HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) Requirements for Award.

Instructions are as follows:

Pursuant to HRS §103D-310(c), the Successful Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations ("DLIR"). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the Commission. A photocopy of the certificate is acceptable to the Commission.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112*, Form LIR#27 which is available at http://hawaii.gov/labor/ui/forms/UI-LIR27_herman.pdf. The DLIR will return the form to the Offeror who in turn shall submit it to the Commission.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the Commission. However, the certificate shall be submitted to the Commission.

5.12.7 Compliance with HRS § 103D-310(c) for an Entity Doing Business in the State

Pursuant to HAR § 3-122-112 the Offeror shall be required to submit a CERTIFICATE OF GOOD STANDING ("CoGS") issued by the BREG. The CoGS is valid for six (6) months from date of issue and must be valid on the date it is received by the PUC. A photocopy of the CoGS is acceptable to the PUC.

To obtain the CoGS, the Offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the CoGS. On-line business registration and the CoGS are available at www.BusinessRegistration.com. To register or obtain the CoGS by phone, call (808) 586-2727 (M-F 7:45 a.m. to 4:30 p.m. HST). Offerors are advised that there are costs associated with registering and obtaining the CoGS.

5.12.8 Final Payment Requirements.

The Successful Offeror is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22) will be required for final payment. A copy of this form is available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the menu.

5.13 CONTRACT EXECUTION

The Successful Offeror receiving an award will be notified by letter and shall be required to enter into a formal written contract ("Contract"). The PUC shall forward the Contract to the Successful Offeror for execution. If the Successful Offeror to whom a contract is awarded fails or neglects to enter into the Contract within the specified time period specified in the award notification or within such further time as may be allowed by the PUC, the Procurement Officer may award the Contract to the Offeror who is next in line, or call for new offers if it is deemed to be in the best interest of the PUC.

No contract shall be considered binding upon the PUC until the contract has been fully and properly executed by all parties thereto. A performance bond in an amount not to exceed fifty (50) per cent of the amount of the contract price is required for this Contract pursuant to HAR § 3-122-224.

Any work undertaken or paid for by the Successful Offeror prior to the official contract commencement date specified on the Contract shall be the responsibility of the Successful Offeror.

5.14 PROPOSAL AS PART OF THE CONTRACT

All of this RFP and the successful proposal shall be incorporated into the Contract.

5.15 CONTRACT ADMINISTRATOR

For the purposes of the Contract, Brooke K. Kane, Administrative Director, (808) 586-2020, is designated as the Contract Administrator.

5.16 INSURANCE REQUIREMENTS

Prior to awarding the contract, the State will require a current Certificate of Insurance verifying the following minimum required insurance coverages:

- General Liability
 - Mandatory coverage per State Comptroller's Memoranda 2010-06, 2009-04, and 2007-24
 - Bodily Injury and Property Damage – Per Occurrence Limit
 - \$1 million per occurrence
 - \$2 million aggregate
- Automobile
 - Mandatory coverage per State Comptroller's Memoranda 2010-06, 2009-04, and 2007-24
 - No less than \$1 million per accident; OR
 - Bodily Injury
 - \$1 million per person
 - \$1 million per accident; AND
 - Property Damage
 - \$1 million per accident
 - Coverage is required for automobile liability arising out of the operation, maintenance, or use of a motor vehicle, owned or rented, while conducting State contracted business.
- Professional Liability (Errors and Omissions)
 - \$1 million per claim
 - \$2, million annual aggregate
 - Professional Liability coverage will be required of all consultants providing expert services to the State. Retroactive date of coverage must be prior to start of professional service.
- Workers' Compensation, Temporary Disability, and Prepaid Health Care
 - Mandatory coverages detailed in and per Chapters 383, 386, 392, and 393, HRS
 - Coverages required of business entities employing an individual(s) whose services are localized in the State and/or an individual(s) whose residence is in the State per Sections 383-2 and 383-3, HRS.

Additionally, Certificates of Insurance shall:

- be completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form;

- be kept current for the entire term of the Contract and written notice shall be provided immediately to the State should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration; failure to secure and maintain the required insurance shall be considered a breach of contract; should the State be forced to expend funds that would have been covered under the specified insurance, the Successful Offeror shall reimburse the State for such funds;
- reflect the State as an additional insured;
- reflect subcontractor(s) as additional insureds or shall be required of subcontractor(s) by the Successful Offeror in addition to the Successful Offeror's own policy(s), if appropriate; and
- be in compliance with State Comptroller's Memorandum 2010-06.

5.17 OWNERSHIP RIGHTS AND COPYRIGHT

The State shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the Successful Offeror pursuant to the Contract, and all such material shall be considered "works made for hire." The State shall also have complete ownership of all software that is purchased under the Contract in order to support a fully operational Program.

All such material and software shall be delivered to the State upon expiration or termination of the Contract. The State, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the Successful Offeror pursuant to the Contract.

5.18 CONTRACT MODIFICATION – UNANTICIPATED AMENDMENTS

During the course of the Contract, the Energy Efficiency Potential Contractor may be required to perform additional work that will be within the general scope of the Contract. When additional work is required, the Contract Administrator will provide the Energy Efficiency Potential Contractor a written description of the additional work and request the Energy Efficiency Potential Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (supplemental contract or contract modification) signed by the Contracting Officer and Energy Efficiency Potential Contractor personnel authorized to sign contracts on behalf of the Energy Efficiency Potential Contractor.

The Energy Efficiency Potential Contractor will not commence additional work until a signed contract modification has been issued.

5.19 SUBCONTRACTING

No work or services shall be subcontracted without the prior written approval of the Procurement Officer. No subcontract shall under any circumstances relieve the Successful Offeror of its obligations and liability under this contract with the State. All persons engaged in performing the work covered by the contract shall be considered employees of the Successful Offeror.

5.20 PROTEST

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award letter, if any, resulting from this solicitation shall be posted in the reception area of the Public Utilities Commission, 465 South King Street, Room 103, Honolulu, Hawaii 96813.

Any protest pursuant to HRS § 103D-701 and HAR § 3-126-3 shall be submitted in writing to the Procurement Officer, Public Utilities Commission, 465 South King Street, Room 103, Honolulu, Hawaii 96813.

5.21 GOVERNING LAW – COST OF LITIGATION

The validity of the Contract and any of its terms or provisions, as well as the rights and duties of the parties to the Contract, shall be governed by the laws of the State of Hawaii. Any action at law or equity to enforce or interpret the provisions of the Contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a part to any litigation commenced by or against the Energy Efficiency Potential Contractor in connection with this Contract, the Energy Efficiency Potential Contractor shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

5.22 ADDITIONAL CONTRACT TERMS AND CONDITIONS

The Commission reserves the right to add terms and conditions during the contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

5.23 CONTRACT INVALIDATION

If any provision of the Contract is found to be invalid, such invalidity will not be construed to invalidate the entire Contract.

5.24 INSPECTION & MODIFICATIONS – REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The Successful Offeror is responsible for the completion of all work set out in the Contract. All work is subject to inspection, evaluation, and approval by the Contracting Officer. The State may employ all reasonable means to ensure that the work is being performed in compliance with the Contract.

Should the Contracting Officer determine that corrections or modifications are necessary in order to accomplish its intent; the Contracting Officer may direct the Successful Offeror to make such changes.

Substantial failure of the Successful Offeror to perform the contract requirements may cause the State to terminate the Contract. In this event, the State may require the Successful Offeror to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

5.25 NON-DISCRIMINATION

The Energy Efficiency Potential Contractor shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Energy Efficiency Potential Contractor or in participation in the benefits of any program or activity funded in whole or in part by the State.

5.26 WAIVER

The failure of the Commission to insist upon the strict compliance with any term, provision or condition of the Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the Commission's right to enforce the same in accordance with the Contract.

5.27 SEVERABILITY

In the event that any provision of the Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of the Contract.

5.28 TERMINATION

The Commission reserves and has the right, at any time during the term of the Contract, in its sole discretion, to terminate and cancel the Contract in the public interest or for the convenience of the State. The Successful Offeror's obligation under the Contract shall continue until the specified termination date.

5.29 DEFAULT

Pursuant to HAR § 3-125-17, if the Successful Offeror refuses or fails to perform any of the provisions of the Contract with such diligence to ensure that contract provisions are met, within any time requirements specified in the Contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of the Contract, the Procurement Officer may notify the Successful Offeror in writing of the delay or non-performance. If the delay or non-performance is not cured in ten (10) days, or any longer time specified in writing by the Procurement Officer, the Contract may be terminated in whole or in part, as applicable.

SECTION SIX
ATTACHMENTS

Attachment 1	Offer Form
Attachment 2	Wage Certificate
Attachment 3	Vendor Reference Form

Attachment 1

OFFER FORM - OF-1
SEALED PROPOSALS AND PRICING FOR AN ENERGY EFFICIENCY POTENTIAL
CONTRACTOR
FOR THE HAWAII ENERGY EFFICIENCY PROGRAM HRS CHAPTER 269, PART VII.
RFP-PUC-13-01

Procurement Officer
Public Utilities Commission
State of Hawaii
Honolulu, Hawaii 96813

Dear Sir or Madame:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ *Corporation ☐ Joint Venture
☐ Other _____
*State of incorporation: _____

Hawaii General Excise Tax License I.D. No. _____

Payment address (other than street address below): _____
City, State, Zip Code: _____

Business address (street address): _____
City, State, Zip Code: _____

Respectfully submitted:

Date: _____ (x) _____
Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

** _____
Exact Legal Name of Company (Offeror)

**If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed.

Attachment 2

Wage Certificate

WAGE CERTIFICATE FOR SERVICE CONTRACTS (See Special Provisions)

Subject: RFP No.: RFP-PUC-13-01

Title of RFP: SEALED PROPOSALS AND PRICING FOR AN ENERGY
EFFICIENCY POTENTIAL CONTRACTOR FOR THE HAWAII ENERGY
EFFICIENCY PROGRAM HRS CHAPTER 269, PART VII.

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Offeror

Signature

Title

Date

Attachment 3

Vendor Reference Form

Vendor (Subcontractor/Partner) Name(s):

Subject: RFP No.: RFP-PUC-13-01

Title of RFP: SEALED PROPOSALS AND PRICING FOR AN ENERGY EFFICIENCY POTENTIAL CONTRACTOR FOR THE HAWAII ENERGY EFFICIENCY PROGRAM HRS CHAPTER 269, PART VII.

Company:

Contact:

Address:

Phone & Fax No.:

E-mail:

Project Name:

Beginning Date of Project: Month/Year

Ending Date of Project: Month/Year

Description of related services provided:

Company:

Contact:

Address:

Phone & Fax No.:

E-mail:

Project Name:

Beginning Date of Project: Month/Year

Ending Date of Project: Month/Year

Description of related services provided:

SECTION SEVEN

APPENDICES

Appendix 1	State Contract General Conditions
Appendix 2	State Contract for Goods and Services Based Upon Request for Competitive Sealed Proposal
Appendix 3	HRS § 269-96
Appendix 4	State of Hawaii Public Utilities Commission Decision & Order 30089, January 3, 2012 Approving an EEPS Framework
Appendix 5	Energy Efficiency Potential Contractor Proposal Budget Template

Appendix 1

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall

obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
 - g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
- d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting

from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and

(4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms

deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.

- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.
14. Termination for Convenience.
- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
- (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.
- The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.
- d. Compensation.
- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the

CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
 - (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
 - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.
16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:
- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
 - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
 - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.
17. Payment Procedures; Final Payment; Tax Clearance.
- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
 - b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
 - c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
 - d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with

section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.
19. Modifications of Contract.
 - a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
 - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
 - c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.

- h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
- 20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
 - (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
- (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;

(5) Method of shipment or packing of supplies; or

(6) Place of delivery.

- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
- c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
- d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
- e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous

substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

42. Confidentiality of Personal Information.

- a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

- (1) Social security number;
- (2) Driver's license number or Hawaii identification card number; or
- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

- b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

Appendix 2



STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED PROPOSALS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____,
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its _____,
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is _____ and _____
("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
under the laws of the State of _____, whose business address and federal and state taxpayer identification numbers are as follows: _____

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to _____,
(Legal authority to enter into this Contract)
the STATE is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) _____
(Identify state sources)

or (2) _____
(Identify federal sources)

or both, in the following amounts: State \$ _____
Federal \$ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory

manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number _____ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed _____ DOLLARS (\$ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS (\$ _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

CORPORATE SEAL

(If available)

(Name of Contractor)

(Signature)

(Print Name)

*

(Print Title)

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY _____)

On this _____ day of _____, _____ before me appeared _____ and _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit _____

Doc. Description: _____

(Notary Stamp or Seal)

Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII

CONTRACTOR'S

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of _____, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is* ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

*Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____

(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____



Attachment - S1

STATE OF HAWAII **SCOPE OF SERVICES**

[Language to be inserted based on the required scope of services in Request for Proposals No. RFP-PUC-13-01 and Successful Offeror's proposal]



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

[Language to be inserted based on the compensation and payment schedule in Request for Proposals No. RFP-PUC-13-01 and Successful Offeror's proposal]



STATE OF HAWAII
TIME OF PERFORMANCE

This CONTRACT, which commences on the Effective date, shall be a multi-year contract ending on June 30, 2014. The State may terminate the contract period at any time, if in the best interest of the State.



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE**

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)

(Date)

(Print Name)

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)



STATE OF HAWAII
SPECIAL CONDITIONS

1. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.
2. Paragraph 17 of the General Conditions is superseded by Section 2.3 of the Request for Proposals No. RFP-PUC-13-01.
3. Paragraph 37 of the General Conditions is supplemented by stating that the entire contract consists of:
 - a. The Contract for Goods and Services;
 - b. General Conditions;
 - c. Contractor's Acknowledgement;
 - d. Contractor's Standards of Conduct Declaration;
 - e. Scope of Services (Attachment S1);
 - f. Compensation and Payment Schedule (Attachment S2);
 - g. Time of Performance (Attachment S3);
 - h. Special Conditions (Attachment S5);
 - i. Supplemental Special Conditions (Attachment S6)
 - j. Request for Proposals No. RFP-PUC-10-01;
 - k. CONTRACTOR's Proposal
 - l. Workplan



STATE OF HAWAII

SUPPLEMENTAL SPECIAL CONDITIONS

**Billing Requirements and
Travel Guidelines**

I. Billing Requirements

As set forth in the Compensation and Payment Schedule, all expenses must be pre-approved by the Hawaii Public Utilities Commission ("Commission"), to the extent reasonably possible.

- Request for Compensation and/or Reimbursement:

All requests for compensation and/or reimbursement shall be submitted on official company letterhead/invoice and supported by the following:

1. Timesheets of each personnel assigned to the project that includes, but not limited to, the following:
 - Name of the project
 - Name of person, title, and company incurring cost
 - Description of task compensation represents
 - Hourly rate of each compensated personnel
 - Number of hours (per task) for which compensation is requested (in .1 hour increments)
 - Subtotal for each task
 - Total compensation hours per each timesheet
2. Receipt or invoice that includes, but is not limited to, the following:
 - Date of receipt or invoice
 - Name of company and address, if feasible, where goods or services rendered
 - Description of business related expense item(s)

All payments for compensation and/or reimbursement must be supported by original or certified copies of original timesheets, receipts and invoices. Reimbursement will be made for personnel work time and business related expenses that are authorized as reasonable and acceptable by the Commission.

- Request for Authorization of Expenses:

All requests for authorization to expend funds must be forwarded through the Procurement Officer, or designee, either via e-mail or letter.

For travel related expenses, authorized business start dates and times must be agreed upon by the Commission prior to making travel arrangements. Adherence to the Travel Guidelines, or prior approval from the Commission for any alternate travel arrangements, is required in order to receive reimbursement for travel expenses.

- Billing Periods:

Please submit an original plus three (3) copies of reimbursement invoices with supporting documentation to the following:

Public Utilities Commission
ATTN: Administrative Director
465 South King Street, Room #103
Honolulu, HI 96813

All requests for payments will be reviewed for accuracy, completeness, and authorized expenses. Payment requests will be processed upon completion of agreed upon milestones, to the satisfaction of the Commission.

II. Travel Guidelines

Authorized travel will be reimbursable by the Commission for arrival and departure no more than twelve hours prior to and after the agreed upon work schedule.

- Hotel Arrangements:

The following recommended hotel is authorized by the Commission for business-related travel. Any charges that are not applicable to Commission business or any costs in excess of what the Commission deems to be authorized and reasonable expenses (e.g., selecting another hotel, extending the length of stay for personal reasons) shall be the responsibility of the traveler. If rooms are not available at the Executive Centre Hotel during required travel dates, prior approval must be obtained before making alternate reservations at other State-approved hotels or comparably priced hotels on the island.

- 1) Executive Centre Hotel—

When making hotel arrangements at the following hotel, mention that you are making reservations under the Hawaii Public Utilities Commission Aston Corporate Travel Club membership:

Executive Centre Hotel (www.astonexecutivecentre.com)
1088 Bishop Street
Honolulu, HI 96813
Phone: 1-800-949-3932/(808) 539-3000 (Main Reservation Desk)

All reimbursements for hotel accommodations must be supported by original hotel bill showing a \$0.00 balance due (original receipt acceptable if reservation and payment is being made through the internet) to ensure that payment was made. Reimbursement will not be made on recreational expenses and other non-business related items.

- Car Rental:

If reservations are made at the Executive Centre Hotel, pre-approval must be obtained for car rentals.

If transportation to and from the airport upon arrival and departure is via taxi, no reimbursement for tips will be made and all reimbursements must be supported by an original taxi receipt.

If transportation is via car rental, reasonably priced rental reservations should be made under the following conditions:

1. No car insurance shall be reimbursable by the Commission.
2. Types of car rentals will be permissible under the following guidelines—
 - Compact car for 1-2 passengers
 - Midsize car for 3-4 passengers
3. Reimbursement will be made only for the following, unless otherwise pre-approved by the Commission —
 - Time and mileage
 - Vehicle licensing fee
 - State and airport taxes
 - Airport concession fee
 - Additional driver fee for Commission authorized travelers only
4. Original car rental agreement and receipt of payment is required to receive reimbursement of car rental related expenses.

- Airfare:

All airfare arrangements must be made utilizing the most direct and cost efficient route. Please go to www.hawaiicorporatetravel.com in order to receive a comparison quote which will be considered the Commission authorized route of travel (most direct and cost efficient route of travel). Any charges that are not applicable to Commission business or any costs in excess of the quotation provided (e.g., stopovers, special or short-run trips, backtracking, using an airline other than the one with the lowest fare, personal side trips or any other routing

impacting the lowest possible fare) through www.hawaiicorporatetravel.com shall be the responsibility of the traveler.

In the event a cheaper fare, in comparison to the Hawaii Corporate Travel (Panda Travel) fare, can be obtained, the difference in costs may not be applied as credit towards other expenses (i.e., hotel costs). Prior approval from the Commission must be obtained before booking the cheaper fare and the authorized Panda Travel quotation must still be furnished as documentation to support reimbursement claim.

Please follow the instructions below to obtain an authorized price quotation:

- 1) Go to www.hawaiicorporatetravel.com
- 2) Select "State of Hawaii"
- 3) On the upper left hand corner, select "Air Fare Quote"
- 4) Fill in all applicable information as shown in attached sample (Note: Please leave the estimated departure and arrival time and airline preference box under the "Flight Information" section and the "Out-of-State Transportation" section blank). You must insert the "Department of Budget and Finance/Public Utilities Commission" as the Department/Division/Office description so that the quote can be linked to the PUC for authorized State travel.
- 5) Click "Send" on the bottom of the form
- 6) Confirm the information you entered by clicking "Send" on the bottom of the form
- 7) You should receive a confirmation note indicating, "Your request for a quotation has been successfully submitted. An agent will work on your request and send a response promptly."
- 8) Please use the quotation from Panda Travel as your authorization and supporting documentation to justify the most direct and cost efficient route. After receiving your quotation, you may book your flight directly with the airlines. [Note: If you choose to book your flight through Panda Travel, you must make reservations through their retail office by calling (808) 734-1961.]

All reimbursements for airline accommodations must be supported by the following originals:

- 1) Hawaii Corporate Travel (Panda Travel) quotation;
- 2) itinerary of travel; and
- 3) receipt of payment of airline ticket.

Please note that e-tickets should be requested for airlines that charge a mandatory processing/surcharge fee to obtain a paper ticket. Reimbursement will not be made on other than "coach" seats, unless prior approval is received from the Commission.

- Meal Claims:

Meal expenses incurred during authorized Commission related business travel are reimbursable up to a maximum of \$60.00/day.

All reimbursements for meals should be identified separately and included in the original bill for reimbursement on an official company letterhead/invoice ("invoice"). Reimbursement will not be made for alcoholic beverages and tips related to meal expenses.

- Travel Reimbursement Claims:

Please submit your bill for reimbursement on an official company invoice with the address listed on the contract and supported by all applicable original receipts as listed above underlined in red.

Please submit an original plus three copies of reimbursement invoice with supporting documentation to the address stated above under Billing Requirements.

PUC Rev (3/10/09)

Appendix 3

Hawaii Revised Statutes Section 269-96

[§269-96] Energy-efficiency portfolio standards. (a) The public utilities commission shall establish energy-efficiency portfolio standards that will maximize cost-effective energy-efficiency programs and technologies.

(b) The energy-efficiency portfolio standards shall be designed to achieve four thousand three hundred gigawatt hours of electricity use reductions statewide by 2030; provided that the commission shall establish interim goals for electricity use reduction to be achieved by 2015, 2020, and 2025 and may also adjust the 2030 standard by rule or order to maximize cost-effective energy-efficiency programs and technologies.

(c) The commission may establish incentives and penalties based on performance in achieving the energy-efficiency portfolio standards by rule or order.

(d) The public utilities commission shall evaluate the energy-efficiency portfolio standard every five years, beginning in 2013, and may revise the standard, based on the best information available at the time, to determine if the energy-efficiency portfolio standard established by this section remains effective and achievable. The commission shall report its findings and revisions to the energy-efficiency portfolio standard, based on its own studies and other information, to the legislature no later than twenty days before the convening of the regular session of 2014, and every five years thereafter.

(e) Beginning in 2015, electric energy savings brought about by the use of renewable displacement or off-set technologies, including solar water heating and sea-water air-conditioning district cooling systems, shall count toward this standard. [L 2009, c 155, pt of §11]

Appendix 4

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION) DOCKET NO. 2010-0037
)
Instituting a Proceeding To)
Investigate Establishing)
Energy Efficiency Portfolio)
Standards, Pursuant to Act 155,)
Session Laws of Hawaii 2009 and)
Hawaii Revised Statutes § 269-96.)
_____)

DECISION AND ORDER NO. 30089

APPROVING A FRAMEWORK FOR ENERGY EFFICIENCY PORTFOLIO STANDARDS

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PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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APPROVING A FRAMEWORK FOR ENERGY EFFICIENCY PORTFOLIO STANDARDS

By this Order, the commission approves the Framework for Energy Efficiency Portfolio Standards ("Framework"), attached hereto as Exhibit A, to govern the achievement of Energy Efficiency Portfolio Standards ("EEPS") in the State of Hawaii ("State"), as prescribed in Hawaii Revised Statutes ("HRS") § 269-96 ("EEPS Law").

I.

Background on EEPS

Energy efficiency is a means of using less energy to provide the same (or greater) level of energy services.

Presently, energy efficiency programs for the HECO Companies¹ are administered by a third-party Public Benefits Fee Administrator ("PBFA") and are funded by a Public Benefits Fee via a surcharge on HECO Companies' ratepayers' utility bills.² The PBFA is subject to regulation by the commission and reports to the commission on a regular basis.³ Through a process called Evaluation, Measurement, and Verification ("EM&V"), discussed later, reported savings from these programs are verified by an independent auditor.⁴ Kauai Island Utility Cooperative ("KIUC"), which provides electric utility service to the island of Kauai, administers its own energy efficiency programs.

An EEPS (or in other states, Energy Efficiency Resource Standard/EERS) is a law that aims to continually increase electric or gas energy savings over time. An EEPS is similar in concept to a renewable portfolio standard ("RPS"), which requires electric utilities to acquire increasing levels of energy from renewable resources by set periods. Stated

¹"HECO Companies" collectively refers to Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited. The HECO Companies provide electric utility service to the islands of Oahu, Hawaii, Maui, Lanai, and Molokai.

²See HRS §§ 269-121 - 269-124; Decision and Order No. 23258, filed on February 13, 2007, in Docket No. 05-0069.

³See HRS § 269-122(b).

⁴See HRS § 269-124(7).

differently, EEPS targets the demand or consumption of electricity, while RPS focuses on the supply or generation of electricity.⁵

II.

Background on EEPS Law

In January 2008, the State and the United States Department of Energy signed a Memorandum of Understanding to establish a long-term partnership with the purpose of transforming the way in which renewable energy and energy efficiency resources are planned and used in the State. This partnership, referred to as the Hawaii Clean Energy Initiative ("HCEI"), set a goal for the State to meet 70% of its energy needs by 2030 through clean energy, with 30% coming from energy efficiency measures, and 40% coming from locally generated renewable sources.

On October 20, 2008, as a product of HCEI, the Governor of the State, the State Department of Business, Economic Development and Tourism ("DBEDT"), the State Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate"), and the HECO Companies

⁵HRS §§ 269-91 - 269-95 ("RPS Law") establishes as Hawaii's RPS the following percentages of renewable energy that must comprise net electricity sales by specific dates: (1) 10% by 2010; (2) 15% by 2015; (3) 25% by 2025; and (4) 40% by 2030.

entered into a comprehensive agreement designed to move the State away from its dependence on imported fossil fuels for electricity and ground transportation, and toward "indigenously produced renewable energy and an ethic of energy efficiency."⁶

Section 12 of the Energy Agreement specifically addressed "Energy Efficiency," and stated "[i]t is the goal of all parties to ensure that Hawaii achieves the maximum possible levels of energy efficiency as it represents the most effective use of resources possible, including conservation by not using resources at all."⁷ To this end, the parties to the Energy Agreement committed to various measures to encourage adoption of energy efficiency, and specifically committed to "support the enactment of an energy efficiency portfolio standard at the 2009 session of the Legislature."⁸

As contemplated in the Energy Agreement, the 2009 session of the State Legislature enacted Act 155, codified as HRS § 269-96, which provides:

- (a) The public utilities commission shall establish energy-efficiency portfolio standards that will maximize cost-

⁶Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies ("Energy Agreement") at 1.

⁷Id. at 21.

⁸Id. at 22.

effective energy-efficiency programs and technologies.

- (b) The energy-efficiency portfolio standards shall be designed to achieve four thousand three hundred gigawatt hours of electricity use reductions statewide by 2030; provided that the commission shall establish interim goals for electricity use reduction to be achieved by 2015, 2020, and 2025 and may also adjust the 2030 standard by rule or order to maximize cost-effective energy-efficiency programs and technologies.
- (c) The commission may establish incentives and penalties based on performance in achieving the energy-efficiency portfolio standards by rule or order.
- (d) The public utilities commission shall evaluate the energy-efficiency portfolio standard every five years, beginning in 2013, and may revise the standard, based on the best information available at the time, to determine if the energy-efficiency portfolio standard established by this section remains effective and achievable. The commission shall report its findings and revisions to the energy-efficiency portfolio standard, based on its own studies and other information, to the legislature no later than twenty days before the convening of the regular session of 2014, and every five years thereafter.
- (e) Beginning in 2015, electric energy savings brought about by the use of renewable displacement or off-set technologies, including solar water heating and seawater air conditioning

district cooling systems, shall count toward this standard.⁹

Thus, the EEPS Law establishes an EEPS for Hawaii of 4,300 gigawatt hours ("GWh") of electricity use reductions statewide by 2030. According to DBEDT, which proposed the 4,300 GWh figure in legislation, this figure was derived by calculating 30% of the sum of the baseline electricity sales forecasts from the HECO Companies' third Integrated Resource Planning ("IRP") processes ("IRP-3") and KIUC's 2005 IRP, extrapolated to 2030.¹⁰ This figure did not account for reductions in sales as a result of combined heat and power, future demand-side management, reductions in sales due to photovoltaic ("PV") systems, and increases in sales due to electric vehicles ("EV").¹¹

III.

Procedural History

As required by HRS § 269-96, on March 8, 2010, the commission instituted this proceeding to examine establishing

⁹HRS § 269-96.

¹⁰See DBEDT's Opening Statement of Position on Establishing EEPS, filed on January 27, 2011, at 17; DBEDT's Final Statement of Position on Establishing Energy Efficiency Portfolio Standards, filed on August 29, 2011, at 22.

¹¹See Final Statement of Position of the Hawaiian Electric Companies, filed on August 29, 2011 ("HECO Companies' FSOP"), at 8, 40.

EEPS that will maximize cost-effective energy efficiency programs and technologies. The Order Initiating Investigation named the HECO Companies, the Consumer Advocate, DBEDT, KIUC, R.W. Beck, Inc. (n.k.a. SAIC Energy, Environment & Infrastructure, LLC) ("Beck/SAIC"), which is the current PBFA for the HECO Companies' service territories, the City and County of Honolulu ("CCH"), the County of Hawaii ("COH"), the County of Maui ("COM"), and the County of Kauai ("COK") as parties to the docket.

In addition, the commission's opening order: directed the HECO Companies to file a status report discussing the progress made toward agreed-upon proposals that were to be initiated by April 1, 2009 and June 2009, as set forth in the Energy Agreement; provided the deadline by which motions to intervene were to be filed; and the deadlines by which a stipulated protective order and stipulated procedural order were to be filed.

On March 25, 2010, Hawaii Renewable Energy Alliance ("HREA") filed its Motion to Intervene, and on March 29, 2010, Blue Planet Foundation ("Blue Planet") and Hawaii Solar Energy Association ("HSEA") filed their respective Motions to Intervene with the commission. The HECO Companies filed a letter with the commission on April 6, 2010, stating that they did not oppose

the granting of intervenor status to HREA, Blue Planet, and HSEA.

By Order issued on April 21, 2010, the commission granted intervention to HREA, Blue Planet and HSEA.¹²

On April 7, 2010, the HECO Companies filed a letter with the commission summarizing the progress made towards agreed-upon proposals in the Energy Agreement.

On May 21, 2010, the Parties filed a proposed Stipulation for Protective Order and a proposed Stipulated Procedural Order with the commission.

On June 3, 2010, the commission approved the Stipulation for Protective Order, and on July 7, 2010, the commission issued its Order Approving, With Modifications, Stipulated Procedural Order.

Pursuant to the Stipulated Procedural Order, the issues in this docket are:

1. What are the appropriate responsibilities and roles of entities to meet the energy efficiency portfolio standards goals?

This issue would include related questions such as (but not limited to): What entity(ies) has the responsibility and accountability for achieving the EEPS goals?; What are the appropriate roles for

¹²Accordingly, the parties to this docket are: HECO Companies, Consumer Advocate, DBEDT, KIUC, Beck/SAIC, CCH, COH, COM, COK, HREA, Blue Planet, and HSEA (collectively, "Parties").

key stakeholders in helping to achieve the EEPS goals?; What type of reporting is appropriate to provide the Commission, the Integrated Resource or Clean Energy Scenario Planning process, and other stakeholders with actual energy efficiency savings achievements and progress towards reaching EEPS interim goals?

2. What is the relationship between the goals of the energy efficiency portfolio standards and other energy goals and initiatives, such as the State energy objectives, renewable portfolio standards, county building codes, etc.?

This issue would include related questions such as (but not limited to): How will the EEPS goals and actual achievements be integrated into the Integrated Resource or Clean Energy Scenario Planning process?; How does the EEPS relate to the duties of the Public Benefit Fee Administrator?

3. What are the appropriate energy efficiency portfolio standards goals by service territory for 2015, 2020, 2025, and 2030 (including identification of measures and programs encompassed by the standards, measurement methods; and evaluation processes)?

This issue would include related questions such as (but not limited to): Is there a clear definition of what energy efficiency programs contribute to the EEPS versus the renewable portfolio standards?; What is the appropriate baseline measurement to utilize in determining achievement of the interim and overall EEPS goals?; What are the appropriate measurement methods to determine EEPS?

4. Is the Public Benefits Fund current funding of 1% of total electric utility revenues for 2010, 1.5% for 2011 and 2012, and 2% for 2013 and thereafter, sufficient to achieve the energy efficiency portfolio

standards goals for 2015, 2020, 2025, and 2030? If the funding is not sufficient, what is the appropriate level of funding?

5. What is the process for the Commission to reevaluate the energy efficiency portfolio standards goals every five years, beginning in 2013, and to revise the goals, if appropriate, based on the best information available at the time, and to determine if the goals remain effective and achievable?

This issue would include a related question (but not be limited to): What entity(ies) has the responsibility and accountability for assisting the Commission with the reevaluation of the energy efficiency portfolio standards goals?

6. Should incentives and/or penalties be utilized to encourage achievement of the energy efficiency portfolio standards?

This issue would include related questions such as (but not limited to): Is an incentive mechanism to help achieve the energy efficiency portfolio standards goals appropriate, and if so what is the appropriate mechanism?; Is a penalty mechanism for underachievement of the energy efficient portfolio standards goals appropriate, and if so, what is the appropriate mechanism?; What are the potential impacts, if any, on the Hawaiian Electric Companies' and KIUC's obligation to serve, provision of reliable electric service and the Integrated Resource or Clean Energy Scenario Planning process if the energy efficiency portfolio standards goals are not achieved?¹³

¹³Exhibit A, attached to Order Approving, With Modifications, Stipulated Procedural Order, filed on July 7, 2010, at 4-6.

The Order Approving, With Modifications, Stipulated Procedural Order included a procedural schedule that was subsequently amended by the commission, as discussed further below.

The initial procedural steps in this docket consisted of informal informational workshops held on July 29, 2010, August 18, 2010, September 8, 2010, September 15, 2010, and December 7, 2010, and included informal information exchanges among the Parties.

On January 27, 2011, the Parties submitted their Preliminary Statements of Position. On February 25 2011, the Parties simultaneously submitted information requests ("IRs"), and on March 30 and 31 and April 1, 2011, the Parties simultaneously filed responses to the IRs.

On April 15, 2011, the Parties held a technical session during which, among other things, the Parties discussed the docket issues established by the Stipulated Procedural Order.

On May 10, 2011, the commission issued a letter to the Parties: (i) rescheduling an upcoming technical session from May 13, 2011 to May 24, 2011; and (ii) stating its intent to have its consultant, James Flanagan Associates ("JFA"), present and guide discussions during the May 24, 2011 technical session.

On May 19, 2011, the commission issued its Order Amending Stipulated Procedural Order, which amended, sua sponte, the Stipulated Procedural Order by amending the applicable dates and/or deadlines for Step Nos. 12 through 20 of the Stipulated Procedural Schedule.

On May 24, 2011, the commission held a technical session, during which, among other things, JFA presented information and led discussions regarding possible effective choices for the Hawaii EEPS and recent nationwide activity in EEPS.

On June 13, 2011, the commission issued its Order Amending Stipulated Procedural Schedule, which further amended, sua sponte, the Stipulated Procedural Order by amending the applicable date for the follow-up technical session (i.e., Step No. 13) from June 27, 2011 to August 12, 2011, to allow the Parties time to review a proposed straw framework prepared by JFA prior to the technical session.

On August 5, 2011, the commission issued a letter to the Parties providing a proposal for "A Framework for Energy Efficiency Portfolio Standards," which was prepared by JFA.

On August 12, 2011, the follow-up technical session was held by the commission for the purpose of providing JFA the opportunity to discuss the draft proposed framework with the Parties.

On August 18, 2011, the commission issued a letter to the Parties providing a revised draft of "A Framework for Energy Efficiency Portfolio Standards" ("Draft EEPS Framework"), as revised by JFA in response to the discussions held during the August 12, 2011 follow-up technical session. In that letter, the commission stated that the Parties may comment on the Draft EEPS Framework in their respective Final Statements of Position ("FSOPs").

The Parties filed their FSOPs on August 29, 2011,¹⁴ which included their comments on the Draft EEPS Framework.

By Order issued on September 9, 2011, the commission further amended, sua sponte, the procedural schedule by: (1) allowing the Parties to file Reply Statements of Position ("Reply SOPs") to the FSOPs by September 23, 2011; (2) removing the Pre-hearing Conference and Panel Hearing from the schedule; and (3) including as the final step in the schedule the issuance of a Decision and Order and final Framework for EEPS by the commission following the filing of the Parties' Reply SOPs.

On September 23, 2011, the Parties filed their Reply SOPs.

¹⁴COM was granted an extension to file its FSOP on August 31, 2011.

IV.

Discussion

The Parties have had ample opportunity to vet the principles and approaches that are embodied in the Framework, which the commission approves herein, in their FSOPs and Reply SOPs, as well as in technical sessions held with the commission's consultant. Accordingly, the discussion that follows will focus on the highpoints of the Framework, and/or on disputed issues that the commission resolves herein. Moreover, this Order discusses the general, overarching concepts and principles approved in the Framework to achieve the EEPS; more specific direction and/or guidance related to implementation of the principles addressed herein will be provided in future orders.

The commission will first generally comment on some of the bigger challenges that arose during the course of this docket and in developing the Framework. The first challenge worth noting pertains to the fact that the statutory EEPS standard is set for 2030, i.e., roughly twenty years from now. The task of developing interim goals and overarching principles associated with an EEPS standard so far into the future brings with it inherent challenges, particularly when the State is relatively new to EEPS. Energy efficiency programs for the HECO Companies were fairly recently transferred to the PBFA in 2009;

the EEPS Law itself was passed in 2009; and several of the Parties acknowledged that updated potential studies were needed to adequately set interim goals and fairly allocate responsibilities for achieving these interim goals. The Framework attempts to deal with this challenge by, as much as possible, focusing on the near-term and what we know now, establishing broad principles and approaches to guide achievement, while acknowledging that future interim goals may be modified as new information, resources, and technology become available.

Another challenge is what some of the Parties referred to as the "jurisdictional gap," which describes the fact that the commission has jurisdiction over some (i.e., the utilities and PBFA), but not all of the entities that are expected to contribute to the EEPS (i.e., federal, state, and county agencies). To respond to this challenge, the Framework recognizes the jurisdictional gap by distinguishing between "commission regulated entities" and "non-regulated entities," but forms one EEPS Technical Working Group ("TWG") where both groups may have members and work together toward achieving the EEPS.

The commission appreciates the contributions of the Parties and its consultant while working through these complex issues and in developing the Framework, which the commission

believes will start us down the right path in attaining the State's energy goals.

A.

Purpose of Framework

As set forth above, the EEPS Law establishes an EEPS of 4,300 GWh of electricity use reductions statewide by 2030, and requires the commission to establish interim EEPS goals to be achieved by 2015, 2020, and 2025. The purpose of the Framework is to establish EEPS interim goals that will set the course for achieving the 2030 standard in the EEPS Law, and also set forth broad principles and strategies for achieving the EEPS.

The commission believes the Framework is sufficiently broad to remain viable and relevant for several years. As noted above, though, the Framework is based on information and resources that are available today, and which may change over time. Thus, it is expected that the commission may need to adjust or modify provisions in the Framework based on its regular evaluation of the EEPS, and as recommended by the TWG, described in further detail in Section IV.F below.

B.

Performance and Evaluation Periods

To provide structure to the interim goal periods in the EEPS Law, the Framework establishes four "performance periods." These coincide with the interim goal periods set forth in the EEPS Law, and end on December 31, 2015, 2020, 2025, and 2030. The first performance period began in January of 2009, thereby making 2008 the baseline year for purposes of EEPS evaluation, and will end on December 31, 2015. Each performance period will have its own interim savings goals, specified in Section IV.C below.

In addition, pursuant to HRS § 269-96(d), the commission must evaluate the EEPS every five years, beginning in 2013, and may revise the EEPS; it must also report its findings and revisions to the EEPS to the legislature no later than twenty days before the convening of the regular session of 2014, and every five years thereafter. Relative to this requirement, the Framework also establishes "evaluation periods" that organize the time within which EEPS progress must be evaluated and reported to the legislature.

Table 1 of the Framework depicts the timing and interplay between the performance and evaluation periods:

Table 1: Timeline for Performance and Evaluation Periods

Event	Dates ¹⁵
First Evaluation Report due to Legislature	20 days before convening of the 2014 session
First EEPS Performance Period	January 2009 - December 2015
Second Evaluation Report due to Legislature	20 days before convening of the 2019 session
Second EEPS Performance Period	January 2016 - December 2020
Third Evaluation Report due to Legislature	20 days before convening of the 2024 session
Third EEPS Performance Period	January 2021 - December 2025
Fourth Evaluation Report due to Legislature	20 days before convening of the 2029 session
Fourth EEPS Performance Period	January 2026 - December 2030
Fifth Evaluation Report due to Legislature	20 days before convening of the 2034 session

C.

Goals and Metrics

While the EEPS Law prescribes one numeric standard of 4,300 GWh of electricity savings by 2030, to ensure a clearer picture of EEPS progress, the Framework advances two additional metrics for achieving EEPS:

¹⁵Dates run from January 1 during the first year through December 31 of the final year of a given period.

1. Energy efficiency to meet 30% of forecasted energy sales in 2030 (which assumes updated utility sales forecasts are used for each evaluation period); and
2. Energy efficiency to meet a fixed percentage of sales relative to a two-year average of total most recent statewide energy sales.¹⁶

On the first metric above, as mentioned earlier, the 4,300 GWh figure in the EEPS Law was based on an estimation of 30% of electric utility sales in 2030, using sales forecasts from the HECO Companies' and KIUC's then-most-recent IRP processes. Thus, the 4,300 GWh standard and the first metric above should be roughly equivalent.

However, the drivers of energy forecasts and sales change over time, often for reasons exogenous to the implementation of energy efficiency. At some future point, 4,300 GWh may no longer equate to 30% of forecast demand in 2030. Measuring energy efficiency accomplishments with respect to goals at some future point of time is challenging, and when the uncertainty of economic conditions or the introduction of EVs to the grid are considered, it may be increasingly difficult to determine if the letter and spirit of the EEPS Law have been met. Each of the three metrics may contain different assumptions and outcomes, and together provide additional insights to understanding EEPS progress.

¹⁶See Framework, Section IV.A.

Table 2 of the Framework sets forth the interim goals under all three metrics for the first performance period as follows:¹⁷

Table 2: First Performance Period Goals

Year	GWh goal	% of baseline	% of forecast
2009	196.5	1.38	1.38
2010	196.5	1.37	1.37
2011	196.4	1.37	1.37
2012	196.4	1.37	1.37
2013	196.4	1.37	1.37
2014	196.4	1.37	1.37
2015	196.4	1.37	1.37
Total	1,375	9.6	9.6

These goals allocate the yearly savings in a linear fashion. The savings per year are roughly equal to the total savings goal (4,300 gwh) divided by the total number of years (22). Some rounding was assumed to simplify the goals for the later periods. The first performance period goals are in-line with recent activity that demonstrated the existing energy efficiency activity within the State is both robust and active. Many states have chosen to backload forecasts to allow time for programs to develop and take hold, but this was not deemed necessary for Hawaii's EEPS.

The incremental goals for the second through fourth performance periods were based on the same methodology as

¹⁷The first performance period is a seven-year period; the remaining three performance periods are five-year periods.

the goals for the first performance period, and are reflected in Table 3 of the Framework:

Table 3: Second Through Fourth Performance Period Goals and Grand Total

Second Performance Period			
Year	GWh goal	% of baseline	% of forecast
2016	195	1.36	1.36
2017	195	1.36	1.36
2018	195	1.36	1.36
2019	195	1.36	1.36
2020	195	1.36	1.36
Total	975	6.8	6.8
Third Performance Period			
Year	GWh goal	% of baseline	% of forecast
2021	195	1.36	1.36
2022	195	1.36	1.36
2023	195	1.36	1.36
2024	195	1.36	1.36
2025	195	1.36	1.36
Total	975	6.8	6.8
Fourth Performance Period			
Year	GWh goal	% of baseline	% of forecast
2026	195	1.36	1.36
2027	195	1.36	1.36
2028	195	1.36	1.36
2029	195	1.36	1.36
2030	195	1.36	1.36
Total	975	6.8	6.8
Grand Total -- First through Fourth Performance Periods			
Year	GWh goal	% of baseline	% of forecast
2030	4,300	30	30

These goals may be revised prior to the beginning of each period as determined through evaluation or legislative

mandate(s). Revisions to performance period goals may be recommended by the TWG for consideration by the commission.

The Parties were in some disagreement over the issue of whether the commission should allocate specific amounts of the EEPS goals to entities responsible for meeting the EEPS. The commission finds that it is premature to assign specific allocations to contributing entities now, particularly without the benefit of updated potential studies. For this reason, the Framework allows the TWG to first identify all contributing entities, and then allocate EEPS annual and interim goals to those entities, based on available information, including the results of potential studies.

D.

Relationship to Ongoing Proceedings

The commission views EEPS as having an important role with at least two other commission proceedings, IRP and RPS. State supported IRP efforts assure that load growth is met with the most cost-effective resources when determining if new supply is needed. EEPS will impact the utilities' IRP processes since the projected amount of energy efficiency will affect the utilities' resource plans. The HECO Companies provide the following example:

[I]f the forecast of energy savings included in the IRP scenario is overly optimistic and actual sales are higher than projected, a need for new firm generation may be created sooner than anticipated, which could negatively affect the Companies' system reliability. This risk to system reliability originates from the uncertainty that the 2030 EEPS goal will be attained and from the uncertainty related to how quickly that goal is attained (or not attained) over time. Even if the energy savings envisioned by the 2030 EEPS goal are assumed to be met, the projected trajectory of energy savings between 2010 and 2030 could have a linear, exponential, S-curve, or some other shape. The rate at which energy-efficiency impacts are recorded over time would have a profound effect on the timing of capital investments and other allocations of resources.¹⁸

Put another way, the total connected renewable generation capacity that must be built will depend on how successful the EEPS is at reducing electric load. Thus, it is imperative that the EEPS evaluation process inform the utilities' respective IRP processes. For this reason, the Framework provides:

EEPS reporting shall be designed and scheduled to provide timely estimates of total energy efficiency resources that have and are expected to be obtained, for use in load forecasting and Scenario planning efforts in the IRP process.¹⁹

With respect to RPS, as indicated above, the RPS and EEPS were the two mechanisms envisioned to achieve the State's

¹⁸HECO Companies' FSOP at 43.

¹⁹Framework, Section IV.E.1.

energy goal of reducing Hawaii's dependence on imported fossil fuel by 70% by 2030. The commission views the EEPS as the essential demand-side counterpart to the RPS's supply-side mandates. If the two mechanisms are examined together, assuming sales growth is fully met by EEPS by 2030, one possible result is the retiring of power plants that are currently delivering 40% of the State's load. This will have an effect on rates that the commission will monitor and address with the legislature, as necessary.

E.

Strategies to Meet the EEPS

1.

Portfolio Approach and Criteria

A portfolio approach will be used to meet the EEPS, with efficiency contributions coming from a combination of sources. This will include a range of programs and activities such as, but not limited to:

traditional incentive-based programs, education and outreach, implementation of building codes and appliance and equipment standards, system upgrades, and efforts designed to address the market barriers to energy efficiency.²⁰

²⁰Framework, Section V.A.2.

The Framework also sets forth criteria that must be used when designing and implementing portfolios of programs and activities. As explicitly stated in the EEPS Law,²¹ the first criterion listed in the Framework is that resource programs should be cost-effective on a portfolio basis. While cost-effectiveness is a good litmus test for inclusion of energy savings measures, it should not be considered as the sole test for EEPS energy saving measures. Some measures when evaluated alone may not be cost-effective, yet when evaluated as part of a package of measures, or installed as part of a new construction project rather than a retrofit, may be quite cost-effective.

Accordingly, the Framework includes several other criteria, including one that is an important quality of energy efficiency measures -- persistence of savings. Longer life measures such as air conditioning equipment or high efficiency motors are generally preferred over shorter life measures such as screw-in fluorescent lamps or short-term behavioral modifications. Savings from longer life measures persist over time and can be counted on to provide efficiency through the twenty-year EEPS period and beyond.

²¹HRS § 269-96(a) provides: "The public utilities commission shall establish [EEPS] that will maximize cost-effective energy efficiency programs and technologies." [Emphasis added.]

2.

Contributing Entities and Delivery Channels

a.

Commission Regulated Entities

Section V.C of the Framework sets forth more specific delivery channels for EEPS contributions, delineated by two different types of contributing entities -- (1) commission regulated entities; and (2) non-regulated entities. With respect to the former, traditional energy efficiency programs administered by KIUC and the PBFA (for the HECO Companies' service territories) are expected to initially provide the bulk of the savings towards EEPS. Savings from non-traditional utility delivered measures like rate design and advanced metering may also count towards EEPS.

In addition, the Framework includes utility system transmission and distribution ("T&D") efficiency as an eligible delivery channel. There was some dispute over this issue. The HECO Companies maintained that the definition of EEPS does not include energy savings resulting from efficiency improvements in generation and T&D on the utility side of the customer meter:

[T]he EEPS goals were derived on the basis of electricity consumption at the customer meter (i.e., electricity sales), which does not include line losses between the generating plants or the conversion of fuel into electricity (heat rates). . . .
[I]dentifying the sources of increased

efficiency in utility generation, transmission, and distribution requires engineering analyses that are substantially different from the issues being addressed in this docket. Those analyses would involve detailed studies of the generation, transmission, and distribution system configuration, system electrical flow analyses, planned maintenance outage planning and procedures, etc. Thus, while the Hawaiian Electric Companies acknowledge that they should be expected to, and do, take steps to increase the inherent efficiency of their generators and their [T&D] infrastructures, those efficiency increases should not be included in the EEPS.

However, if the Commission determines that it wants to count electric system efficiencies toward EEPS Draft EEPS Framework, then 1) generation efficiency improvements should not be included, and 2) [T&D] electricity savings may count towards the EEPS goals, but the utilities should not be allocated goals for T&D electricity savings.

Generation efficiency is expressed as British thermal units ("Btus") burned per kilowatthour ("kWh") generated, also known as heat rate. A lower heat rate means better efficiency because fewer Btus are burned to generate a kWh of electricity. However, while improved generation efficiency results in fewer Btus consumed it does not result in lower electricity use. Therefore, generation efficiency improvements do not contribute to the achievement of EEPS, since EEPS is measured by the amount of electricity use reductions.

Furthermore, the inclusion of improved generation efficiency in the EEPS creates unintended consequences. Achievement of [RPS] is mandated by HRS §269-91. In order for the utilities to integrate greater amounts of intermittent renewable energy and

achieve the RPS, they will likely need to run additional utility generating units to provide additional operation reserve capacity and maintain service reliability to their customers. This will result in higher heat rates and less generation efficiency, all other factors being the same.²²

On the other hand, several Parties (e.g., DBEDT, Blue Planet, and HREA) argued that efficiencies gained from generation and T&D should be counted in EEPS. For example, Blue Planet argued for inclusion of generation efficiency as follows:

The EEPS should not exclude efficiency gains from generation for the same reasons gains from large utility customers should not be excluded. To achieve the 2030 Standard, the EEPS must include large customers because they represent the potential for significant [energy use reductions]. Power plants operated by the HECO Companies (in particular the Hawaiian Electric Company) and KIUC consume significant amounts of the electricity they generate. The electricity is consumed to operate and maintain the power plants. The amount of electricity consumed is equivalent to the electricity consumed by the utility's large customers. Given the relative amount of electricity consumed by utility power plants, and the corresponding potential gains in efficiency, it is logical to include generation as an EEPS program or technology.

Although increased integration of variable renewable energy sources could result in increased system or plant heat rate, such increases may be more than offset by increases in energy efficiency and thus variable energy from renewable generation does not provide a sound basis for excluding

²²HECO Companies' FSOP at 12-13 (emphasis added).

generation as an EEPS program or technology. In general, variable renewable generation increases generator plant heat rates by requiring the plant to operate at less efficient electricity generation output levels. Similarly, system heat rates increase because more generating units are operated at nearer to their minimum output level. Including generator efficiency as an EEPS program and technology would encourage utilities to reduce the amount of generating units operating at minimum output levels.²³

As noted by the HECO Companies, electric utilities are expected to contribute savings from improvements to their systems. Savings from measures such as high efficiency transformer replacement, load balancing, re-conductoring and voltage regulation or optimization are all potential sources of utility energy efficiency savings. Voltage optimization, in particular, is a good example of a known energy efficiency measure that has proven to be a cost-effective way to increase end-use efficiency, reduce distribution losses and improve power quality and reliability. The Framework accordingly includes these types of T&D measures as an eligible delivery channel, but at this early stage, does not make any specific allocations for T&D savings to the utilities.

For generation efficiencies, the commission is not convinced that the EEPS Law was intended to also encompass utility heat rates, which are quite distinct from the metric of

²³Blue Planet's Final Statement of Position, filed on August 29, 2011, at 13-14.

electricity sales that the EEPS intends to measure. In addition, inclusion of generation efficiencies would add complexity to the analysis, tracking and reporting of EEPS progress. Accordingly, generation efficiencies were omitted from the Framework.

b.

Non-Regulated Entities

The Framework lists several delivery channels for non-regulated entities:

Building Codes: Building codes provide a small contribution initially. However, savings compound over time, and as such, savings from building codes provide a good complement to ratepayer funded measures, which are expected to provide the bulk of near-term contributions.

Federal, State and Local Appliance Standards: National appliance standards currently in effect are included in utility sales forecasts. However, new federal, state and local standards are not, and should be counted towards EEPS goals. State appliance codes such as those for plasma televisions or solar water heaters all provide for energy savings that can contribute to the EEPS.

Legislative Mandates: Mandatory benchmarking is an example of a legislative directive that can provide savings at a low cost. Several states now require information about energy usage at the time of sale for commercial and residential properties. This visibility encourages investment in efficiency for all properties. Many items in this category are already being implemented by the State's Energy Office, DBEDT, and should be counted towards EEPS.

Non-Profits: Many small and large non-profits, environmental groups, and community organizations are actively working to educate citizens about energy efficiency. These groups may provide equipment or training that can result in significant reductions in energy usage at home and in offices. Participation by these groups should be encouraged and supported through the TWG.

c.

Eligible and Ineligible Measures

Pursuant to HRS § 269-91 in the RPS Law, beginning January 1, 2015, customer-sited, grid-connected renewable energy systems (i.e., PV) shall count towards the RPS and not towards the EEPS. Thus, this is one clear example of an ineligible EEPS measure, effective January 1, 2015.

In the commission's view, the determination of eligible and ineligible measures should evolve in the TWG as information is updated and new programs and technologies are introduced. Thus, the Framework does not include an exhaustive list of eligible and ineligible measures for EEPS. Rather, it requires the TWG to develop and maintain such a list, for submission to the commission.²⁴

d.

Updating Energy Efficiency Potential Savings Estimates

As noted earlier, to make sound decisions regarding expenditures towards meeting EEPS, accurate information about electric energy savings potential and costs is needed. To this end, the Framework provides that updated potential studies for all utility service territories are necessary for EEPS planning purposes. For service territories where this information is not available or is not current, the Framework allows the commission to select an entity to perform a potential study. The Framework also lists a number of factors for inclusion in the updated potential studies.²⁵

²⁴See Framework, Section V.D.3.

²⁵See Framework, Section V.E.2.

F.

TWG

As addressed above, energy consumption patterns, sales forecasts, and technologies may change significantly between each performance period. For this reason, it is important to refine strategies and expectations for meeting the EEPS. The commission believes the best approach to stay engaged with ongoing issues is to set up the TWG, with stakeholders from both commission regulated entities and non-regulated entities.²⁶ It is the intent of the Framework to support and encourage contributions from both of these groups, since it will take contributions from both to meet the EEPS. It therefore makes sense to have all contributors working together to reach the common EEPS standard.

The Framework requires the TWG to establish its operating procedures and meet regularly to provide recommendations in support of the evaluation and policy process as necessary. However, for the most part, the commission expects the TWG to work together on an informal basis, similar to the Technical Advisory Group currently in place for PBFA-related functions. Recommendations and findings by this

²⁶Earlier drafts of the Framework contemplated two separate working groups for commission regulated entities and non-regulated entities. However, in response to concerns raised by some of the Parties over resources and efficiencies, the commission decided to form just one TWG.

group will be incorporated into legislative reports, as appropriate, and may be implemented at the discretion of the commission.

G.

Tracking and Reporting Requirements and Timing

To track and report EEPS savings from all contributing entities, the commission may select an EEPS Reporting Contractor. Although technically a challenging task, tracking and reporting savings is largely a bookkeeping function. This entity shall be neutral to the outcome of the tabulated results and not engaged in administering any incentives or penalties.

For commission regulated entities, the PBFA and KIUC shall continue to file annual plans and report actual energy efficiency program impacts. These reports, which may be used by the EEPS Reporting Contractor, shall incorporate their respective contributions towards EEPS short and long range goals. Each utility shall also report annual estimated energy savings from efficiency-related activities, including, but not limited to: rate design, demand response, and T&D system improvements. Non-regulated entities that wish to contribute towards the EEPS may work with the EEPS Reporting Contractor to develop reporting requirements.

H.

EEPS Evaluation, Measurement, and Verification

Generally, EM&V is the performance of studies and activities aimed at determining the effects of a program or portfolio of programs or policy initiatives, including the implementation of codes and standards. There are two objectives to EM&V: (1) to document and measure the effects of a program, activity and/or policy initiative and determine whether it met its goals with respect to being a reliable energy resource; and (2) to help understand why those effects occurred and identify ways to improve programs, activities or policy initiatives or refine them, and select future approaches.

Currently, as noted above, separate EM&V is being done for PBFA-administered and KIUC-administered energy efficiency programs. The EM&V outlined in the Framework will be in addition to the EM&V already being conducted for PBFA and utility programs, and will be focused on whether or not those programs, and other efforts from non-regulated entities, are meeting the EEPS ("EEPS EM&V"). EEPS EM&V may be conducted separately for commission-regulated and non-regulated programs and activities, but the results will be combined for reporting purposes.

Contributing entities will be responsible for submitting EEPS-related EM&V estimates of savings that are

expected to be achieved by the proposed programs and activities (ex ante estimates), and subsequently documenting the savings achieved (ex post estimates). The commission may retain an EEPS EM&V Contractor to facilitate, review, conduct, adjust and compile EEPS EM&V results. The TWG may provide review and feedback on all aspects of EEPS EM&V.

Regarding funding, contributing entities will be responsible for developing and funding their own EEPS EM&V to document the validity of their contributions. However, the Framework does not require that EM&V be performed by a third-party auditor (with the exception of PBFA programs).²⁷ To the extent that contributing entities need assistance with any aspects of EEPS-related EM&V, the commission's EEPS EM&V Contractor may be made available, at the commission's discretion.

Section VIII.F of the Framework lists several metrics that may be used as a part of EEPS EM&V, including: gross energy savings at generation; free-ridership; persistence; market effects; and other metrics that may be recommended by the TWG and/or at the request of the commission.

²⁷These programs are statutorily required to be verified by an independent auditor. See HRS § 269-124(7).

I.

Cost-Effectiveness and Consumer Bill Impacts

To determine cost-effectiveness, programs must pass the Total Resource Cost ("TRC") test, which assures that the total benefits exceed the total societal costs. Societal costs include the extra costs of energy efficiency measures as well as the administration costs of the programs. Benefits generally are the sum value of the stream of energy savings provided by these measures. The Framework provides details regarding these costs and benefits.

Program portfolios must also pass the Utility/Administrator Cost test, which ensures that the benefits ratepayers receive from these programs exceed the programs' cost. The Framework provides that a real discount rate of 5% is appropriate for the societal benefit cost modeling of energy efficiency programs where risk is spread across the entire state. This rate, however, may be revised by recommendation of the TWG and subsequent approval by the commission.²⁸

When using the TRC or the Utility/Administrator test, the following benefits shall be included: (1) avoided electric energy benefits; (2) avoided generation capacity benefits; (3) avoided T&D capacity benefits; and (4) non-electric

²⁸See Framework, Section IX.A.2.

benefits, such as economic development benefits, job creation, energy security benefits and a greenhouse gas benefit.

With respect to avoided costs, the Framework, adopting language proposed by the HECO Companies, provides:

- a) Avoided cost figures should reflect renewable energy and capacity costs. Avoided costs should be in line with those determined in IRP plans. Final values may be proposed by the utilities and the EEPS Technical Working Group for reporting to the Commission at each five-year evaluation reporting period or as requested by the Commission.
- b) The utilities will calculate a range of avoided costs for the energy efficiency programs and activities. The [TWG] will determine the appropriate avoided cost values to use in evaluating the cost-effectiveness of such programs and activities and report these costs to the Commission.
- c) The utilities shall provide estimates of avoided [T&D] capital costs, and avoided [T&D] energy costs due to avoided line losses, for the energy efficiency programs and activities. The utilities shall use reasonable methods to estimate avoided [T&D] costs, which take into account the information, data and forecasts available to them, and the practical difficulties associated with determining such estimates. The utilities shall provide explanations of the methods used to determine the estimates, and shall refine such estimates as required to do so by the Commission.²⁹

²⁹Framework, Section IX.B.2.

While the Framework leaves flexibility as to some of the specific details of cost-effectiveness calculations, it is the intent that these calculations provide a fair comparison to all of the built-up costs that are afforded the supply-side comparison. Similar to those concepts used in the IRP, EEPS savings may be called upon to reduce T&D costs or to reduce the cost of risks associated with fossil fuel reliance. As these values will change over time, so will the assumptions used in cost-effectiveness calculations used for the EEPS.

The Framework acknowledges that bill and rate impacts must be considered when setting the EEPS interim goals. The Consumer Advocate, in particular, voiced concerns on this issue:

It must be recognized that the ratepayers do not represent a limitless source of funds. Regardless of the economic conditions utilities and regulators should not allow rates to significantly increase in order to avoid rate shock, but such consideration should be given even greater weight during these times. To make clear, the Consumer Advocate is not recommending that the State should not continue to make strides towards energy independence and a clean energy industry. However, such progress should not be accomplished in a fashion that will cause Hawaii's economy, its businesses and residents to suffer from unnecessarily prolonged economic doldrums due to unreasonably high utility rates.³⁰

³⁰Division of Consumer Advocacy's Final Statement of Position, filed on August 29, 2011, at 12.

Generally, long-term bill impacts associated with the implementation of cost-effective energy efficiency are positive. Selecting the lower cost resource will reduce energy bills in the long run. The commission, however, agrees with the Consumer Advocate that ratepayers should not have to shoulder unreasonably increased rates due to EEPS, whether attributed to the actual programs or the administrative costs associated with the programs. Thus, it is important to review bill impacts on a regular basis.

The Framework accordingly encourages the TWG to work with the Consumer Advocate to address energy efficiency bill-related issues, in particular for commission-regulated programs and activities. Moreover, the Framework requires that all annual and five-year reporting discuss short and long-term bill impacts for each customer class in the following categories: (1) Non-participants, which are ratepayers that do not participate in energy efficiency programs and activities; (2) Participants, which are ratepayers that participate in energy efficiency programs and activities; and (3) Rate class totals, which indicate the effect of efficiency savings across the ratepayer class as a whole.

J.

Funding, Incentives and Penalties

Ratepayer funding for PBFA programs and activities is currently set at 1.5% of utility electric sales for the 2011 and 2012 calendar years. The Framework provides that funding for traditional PBFA and utility energy efficiency programs should be re-evaluated by the TWG regularly or at each five-year evaluation period to determine if it is sufficient to meet the State's energy goals.³¹

As for incentives, the Framework allows the existing PBFA model of performance based withholding and a small incentive for exceeding target goals to continue for the current contract term. However, revised incentive mechanisms may be proposed by the TWG for future PBFA contracts. Any changes to incentive mechanisms will be at the discretion of the commission.

Regarding penalties, at this time, without the results of updated potential studies and any allocation of EEPS responsibilities to EEPS contributing entities, the commission finds it premature to impose any penalty mechanism for failure to meet EEPS goals. Upon completion of potential studies, sufficient information may be available for the commission to

³¹See Framework, Section X.A.

determine fair allocations and consider penalties for not reaching the goals.

V.

Order

THE COMMISSION ORDERS:

The Framework for Energy Efficiency Portfolio Standards, attached hereto as Exhibit A, is approved to govern the achievement of EEPS, unless otherwise amended or ordered by the commission.

DONE at Honolulu, Hawaii JAN - 3 2012.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By *Hermine Morita*
Hermine Morita, Chair

By *John E. Cole*
John E. Cole, Commissioner

APPROVED AS TO FORM:

Kaiulani Kidani Shinsato
Kaiulani Kidani Shinsato
Commission Counsel

By (RECUSED)
Michael E. Champley, Commissioner

2010-0037.sl

A FRAMEWORK FOR ENERGY EFFICIENCY PORTFOLIO STANDARDS

JANUARY 3, 2012

STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
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I. Definitions

As used in this Framework:

"Commission" means the Public Utilities Commission of the State of Hawaii.

"Commission Regulated Entity" or "Commission regulated" means an entity contributing to the EEPS and subject to direct regulation and/or oversight by the Commission.

"Consumer Advocate" means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii.

"Contributing Entity" means an entity that implements programs or activities designed to produce energy efficiency savings that contribute to the EEPS.

"EEPS" or "Energy Efficiency Portfolio Standard" generally refers to a law that sets a standard of electricity use reduction to be achieved in incremental stages. For Hawaii, EEPS refers to the standard set forth by Act 155, Session Laws of Hawaii 2009, and promulgated as HRS § 269-96.

"EEPS EM&V Contractor" means an entity or entities contracted by the Commission to provide an independent review of EEPS-related data filed with the Commission.

"EEPS Reporting Contractor" means an entity contracted by the Commission to track and report savings documented through the EM&V process.

"EEPS Technical Working Group" means a steering committee of members selected by the Commission to represent the Contributing Entities.

"EM&V" or "Evaluation Measurement & Verification" is the performance of studies and activities aimed at determining the effects of a program or portfolio of programs or policy initiatives including implementation of codes and standards.

"Energy efficiency" is a means of using less energy to provide the same (or greater) level of energy services.

"Framework" means this EEPS Framework, as described in this document.

"GWh" means gigawatt-hour.

"HRS" means Hawaii Revised Statutes.

"HECO Companies" means Hawaiian Electric Company, Inc.; Hawaii Electric Light Company, Inc.; and Maui Electric Company, Ltd.

"IRP" or "Integrated Resource Planning" means a process in which stakeholders develop an Action Plan to govern how utilities will meet energy objectives and customer energy needs consistent with State energy policies and goals, while providing safe and reliable utility service at reasonable cost, through the development of Resource Plans and Scenarios of possible futures that provide a broader long-term perspective.

"KIUC" means Kauai Island Utility Cooperative.

"MWh" means megawatt-hour.

"Non-Regulated Entity" or "non-regulated" means an entity contributing to the EEPS but not otherwise subject to direct regulation and/or oversight by the Commission.

"PBF" means the public benefits fee established by the Commission, pursuant to HRS § 269-121, to include all or a portion of the moneys collected by Hawaii's electric utilities from ratepayers through a demand-side management surcharge and transferred to a third-party administrator contracted by the Commission to provide energy efficiency and demand-side management programs and services, subject to Commission review and approval.

"PBFA" or "Public Benefits Fee Administrator" means the third-party administrator contracted by the Commission to operate and manage energy efficiency

"RPS" or "Renewable Portfolio Standards" means the standards or goals set forth in HRS § 269-95.

"State" means the State of Hawaii.

II. Introduction

1. The State has a vested interest in promoting and maintaining a clean energy economy that utilizes energy as efficiently as possible.

(2) Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of growth;

• • • •

(A) Development of cost-effective demand-side management programs;

(B) Education; and

(C) Adoption of energy-efficient practices and technologies; [and]

.

(6) Support research, development, demonstration, and use of energy efficiency, load management, and other demand-side management programs, practices, and technologies[.]

B. Goal of the EEPS Law

1. On June 25, 2009, A Bill for An Act Relating to Energy Resources, Act 155, Session Laws of Hawaii 2009 ("Act 155"), was signed into law and promulgated as HRS § 269-96 ("EEPS Law").
2. The purpose of the EEPS Law, as described in Act 155, is to "...maximize cost-effective energy-efficiency programs and technologies to achieve electricity-use reductions to the maximum extent feasible by establishing an energy efficiency portfolio standard."

C. EEPS Targets

1. Pursuant to HRS § 269-96(a), the Commission shall establish EEPS that will maximize cost-effective energy efficiency programs and technologies.
2. Pursuant to HRS § 269-96(b), the EEPS shall be designed to achieve 4,300 GWh of electricity use reductions statewide by 2030; provided that the Commission shall establish EEPS interim goals for electricity use reduction to be achieved by 2015, 2020, and 2025, and may also adjust the 2030 standard by rule or order to maximize cost-effective energy efficiency programs and technologies.

D. Purpose of Framework

By this Framework, the Commission establishes EEPS interim goals coincident with four performance periods (one seven-year period and three five-year periods), and sets forth broad principles and strategies for achieving the EEPS; provided that the Commission may modify any of the provisions in this Framework based on its periodic evaluation of the EEPS, with input from the EEPS Technical Working Group, and as necessary to achieve the 2030 standard in the EEPS Law.

III. Performance and Evaluation Periods

A. Performance Periods

There shall be four "performance periods" that end on December 31, 2015, 2020, 2025 and 2030, respectively. Each of these periods shall have an electricity savings goal for cumulative savings to be obtained during that period, as measured by the three metrics described in Section IV.A. The first EEPS performance period began in January of 2009 and will end on December 31, 2015.

B. Evaluation Periods

1. As provided in HRS § 269-96(d), "evaluation periods" are established for assessing progress toward EEPS goals during each performance period, and for the Commission to determine if EEPS remains effective and achievable.
2. Evaluations of progress-to-date and progress-expected-to-occur for each evaluation period shall be conducted sufficiently prior to the conclusion of each performance period to ensure that updates to savings potential, benefits, and costs are determined in order to revise the goals and approaches for the subsequent performance period as necessary.

3. These cycles are repeated every five years until the standard is achieved in 2030, and following 2030, to assess the EEPS.

C. Timeline

Table 1 below describes the starting and ending dates for the performance periods, with concomitant evaluation periods, including key reporting milestones.¹ The Commission may establish interim guidelines necessary to meet the requirements articulated below.

¹Note that the first cycle, January 1, 2009-December 31, 2015, is actually seven years rather than five.

Table 1: Timeline for Performance and Evaluation Periods

Event	Dates ²
First Evaluation Report due to Legislature	20 days before convening of the 2014 session
First EEPS Performance Period	January 2009 - December 2015
Second Evaluation Report due to Legislature	20 days before convening of the 2019 session
Second EEPS Performance Period	January 2016 - December 2020
Third Evaluation Report due to Legislature	20 days before convening of the 2024 session
Third EEPS Performance Period	January 2021 - December 2025
Fourth Evaluation Report due to Legislature	20 days before convening of the 2029 session
Fourth EEPS Performance Period	January 2026 - December 2030
Fifth Evaluation Report due to Legislature	20 days before convening of the 2034 session

IV. Goals and Metrics

A. Metrics for Achieving the EEPS

To ensure a clearer picture of EEPS progress, EEPS shall be tracked and reported following three metrics:

²Dates run from January 1 during the first year through December 31 of the final year of a given period.

1. 4,300 GWh of electricity use reductions statewide by 2030, as provided in HRS § 269-96(b);³
2. Energy efficiency to meet 30% of forecasted energy sales in 2030. This assumes updated utility sales forecasts are used for each evaluation period; and
3. Energy efficiency to meet a fixed percentage of sales relative to a two-year average of total most recent statewide energy sales.

B. Goals for First Performance Period

EEPS goals for the first performance period shall be:

Table 2: First Performance Period Goals

Year	GWh goal	% of baseline	% of forecast
2009	196.5	1.38	1.38
2010	196.5	1.37	1.37
2011	196.4	1.37	1.37
2012	196.4	1.37	1.37
2013	196.4	1.37	1.37
2014	196.4	1.37	1.37
2015	196.4	1.37	1.37
Total	1,375	9.6	9.6

C. Goals for Second through Fourth Performance Periods

The goals for the second through fourth performance periods are described below in Table 3. These goals may be revised prior to the beginning of each period as determined through evaluation or legislative mandate(s). Revisions

³Gross energy savings measured at system level (including energy savings from reduced transmission and distribution losses).

to performance period goals may be recommended by the EEPS Technical Working Group for consideration by the Commission.

Table 3: Second Through Fourth Performance Period Goals and Grand Total

Second Performance Period			
Year	GWh goal	% of baseline	% of forecast
2016	195	1.36	1.36
2017	195	1.36	1.36
2018	195	1.36	1.36
2019	195	1.36	1.36
2020	195	1.36	1.36
Total	975	6.8	6.8
Third Performance Period			
Year	GWh goal	% of baseline	% of forecast
2021	195	1.36	1.36
2022	195	1.36	1.36
2023	195	1.36	1.36
2024	195	1.36	1.36
2025	195	1.36	1.36
Total	975	6.8	6.8
Fourth Performance Period			
Year	GWh goal	% of baseline	% of forecast
2026	195	1.36	1.36
2027	195	1.36	1.36
2028	195	1.36	1.36
2029	195	1.36	1.36
2030	195	1.36	1.36
Total	975	6.8	6.8
Grand Total -- First through Fourth Performance Periods			
Year	GWh goal	% of baseline	% of forecast
2030	4,300	30	30

D. Allocation of Goals to the Contributing Entities

1. The Commission regulated and non-regulated entities that contribute towards EEPS savings will be identified by the EEPS Technical Working Group (see Section VI. Roles and Responsibilities).
2. The EEPS Technical Working Group will allocate EEPS annual and interim goals to the Contributing Entities based on the information available to them, including the results of any energy efficiency potential studies.
3. The allocations should be reviewed every five years, and if necessary, modified. Modifications recommended by the EEPS Technical Working Group should be reported to the Commission.

E. Relationship to Ongoing Proceedings

1. IRP

EEPS reporting shall be designed and scheduled to provide timely estimates of total energy efficiency resources that have and are expected to be obtained, for use in load forecasting and Scenario planning efforts in the IRP process.

2. RPS

The RPS goals set forth in HRS § 269-95, in coordination with the EEPS and EEPS interim goals, and energy electricity savings from other sectors, shall apply towards the State's energy goal of 70% of Hawaii's energy needs coming from renewable energy by the year 2030, as contemplated in Act 155.

V. Strategies to Meet the EEPS

The following key principals and strategies apply to achieving the EEPS.

A. Portfolio Approach and Strategies

1. The Commission will take an approach that combines short- and medium-term resource acquisition and long-term market transformation. Resource acquisition programs and measures deliver cost-effective and measureable savings through the installation of specific energy efficient equipment. Market transformation goals will help to develop infrastructure necessary for the continued delivery of savings over the long-term.
2. A portfolio approach will be used to achieve the EEPS. It will include a range of programs and activities such as, but not limited to: traditional incentive-based programs, education and outreach, implementation of building codes and appliance and equipment standards, system upgrades, and efforts designed to address the market barriers to energy efficiency. Approaches to overcome these barriers may include low interest loan programs, trade ally programs, free or low cost energy audits and education, incentives for sub-metering, or other innovative approaches.

B. Portfolio Components and Criteria

In designing and implementing portfolios of programs and activities, the following criteria shall be used to build balanced resource acquisition and market transformation portfolios in each market segment.

1. Resource programs should be cost-effective on a portfolio basis. Commission regulated entities and the EEPS Technical Working

Group should collaborate to design and implement program portfolios.

2. In general, energy efficiency portfolios shall favor measures with longer effective useful lives that provide efficiency through the twenty-year EEPS period and beyond. Longer life measures, such as air conditioning equipment or high efficiency motors, are preferred over shorter life measures, such as screw-in fluorescent lamps or short-term behavioral modifications. Non-energy benefits, such as job creation and increased productivity or reliability, should be considered to the extent that they can be measured, and that non-energy costs that may exist are also considered. Portfolio design should encourage the use of emerging technologies and optimization of systems.
3. Market transformation programs may not be cost-effective in the year they are offered, but should be cost-effective over a five-year term or when folded into an annual portfolio of programs. Transformation programs often generate participants for resource programs and should be designed with this consideration in mind. Typical transformation programs may include the following:
 - a) Energy training for engineers, trades people, building operators and architects;
 - b) Increased collaboration with builders and county building departments;
 - c) Development of programs that leverage schools and universities to promote and study energy efficiency; and
 - d) Support of benchmarking or time of sale energy scores for commercial buildings.

4. Savings obtained from solar water heating programs and sea-water air conditioning shall count towards the EEPS.
5. Other suitable measures and approaches may count toward the EEPS based upon recommendations from the EEPS Technical Working Group.

C. Contributing Entities and Delivery Channels

The Commission regulated and non-regulated entities may use a variety of delivery channels and mechanisms to meet the EEPS, including, but not limited to contributions from:

1. Commission Regulated Entities

a) Traditional Energy Efficiency Programs

Utility-administered (i.e., by KIUC) and third-party administered (i.e., PBFA for HECO Companies' service territories) programs are expected to initially provide the bulk of the savings towards EEPS.

b) Other Utility Programs

Utility delivered programs such as rate design or advanced metering may also contribute to EEPS.

c) Coordinated Programs

The PBFA and/or KIUC may coordinate with government agencies to assist in the design of new standards that complement ratepayer funded programs as they are rolled out.

The PBFA and/or KIUC may also provide assistance with incentives, and training and enforcement to respective County building departments during

initial rollout periods for new building codes.

Any use of ratepayer funds to support non-regulated programs and activities shall be reviewed and approved by the Commission or its designee prior to such funds being committed.

To the extent that Commission-regulated entities assist with non-ratepayer funded activities, the associated savings may be counted by the applicable ratepayer funded program provider.

d) Utility System Efficiency

Utilities (i.e, HECO Companies and KIUC) are expected to contribute savings from improvements to their system. Savings from measures such as high efficiency transformer replacement, re-conductoring and voltage regulation or optimization are all potential sources of utility energy efficiency savings.

2. Non-Regulated Entities

a) Building Codes

Energy savings from building codes developed and implemented subsequent to preparation of the demand forecasts relied upon in the development of Act 155 shall count toward achievement of the EEPS.

b) Federal, State and Local Appliance Standards

Energy savings from appliance and equipment standards developed and implemented subsequent to preparation of the demand forecasts relied upon in

the development of Act 155 shall count toward achievement of the EEPS.

c) Legislative Mandates

State building retrofits, time of sale reporting, energy service contracts and mandatory benchmarking are all examples of legislative mandates that may provide savings at a low cost. These concepts are referenced in Act 155 and should be utilized to the extent possible.

d) Non-Profits

Non-profits, environmental groups and community organizations are actively working to educate consumers on energy efficiency initiatives. Participation by these groups should be encouraged and supported through the EEPS Technical Working Group and ratepayer funded activities.

D. Eligible and Ineligible Measures and Approaches

1. Energy savings resulting from external factors including the departure of a major customer, such as the closing of military base, or the reduction of operating hours in a retail store shall not count toward the EEPS.
2. Pursuant to HRS § 269-91, beginning January 1, 2015, customer-sited, grid-connected renewable energy systems (i.e., photovoltaic systems) shall count towards the RPS and not toward the EEPS.
3. The EEPS Technical Working Group shall develop and maintain a list of eligible and ineligible measures and approaches for submission to the Commission.

E. Updating Energy Efficiency Potential Savings Estimates

1. Updated potential studies for all utility service territories are necessary for EEPS planning purposes. For service territories where this information is not available or is not current, the Commission may select an entity to perform a potential study. These studies shall be coordinated with revised residential and commercial utility saturation studies on an ongoing basis.
2. Updated potential studies shall include, but not be limited to:
 - a) A focus on developing a shorter-term re-useable model that provides estimates of technical and economic potential for the five-year term as well as a long term analysis to 2030, and beyond, as appropriate.
 - b) A modeling of results that are updated every five years at a minimum.
 - c) Models that utilize revisions and updates to primary field and economic data gathered through EM&V research, PBFA and KIUC studies and other data as needed, including utility data.
 - d) The utilization of updated residential and commercial saturation data that accurately represent energy use in Hawaii's residential, industrial and business sectors.
 - e) Updates to saturation data developed in coordination with the EEPS Technical Working Group, EM&V providers, utilities and the PBFA to assure the data gathered is timely, useful and accurate. Utility cost recovery for these efforts shall be determined by the Commission.

- f) Updates to the saturation studies shall be coordinated such that this information can be used in the first and subsequent evaluation periods.

VI. Roles and Responsibilities

A. Commission Regulated Activities

The majority of the EEPS savings will initially come from Commission regulated entities, namely the energy efficiency programs administered by the PBFA and KIUC and the transmission and distribution system improvements implemented by the electric utilities.

B. Non-Regulated Activities

Energy-related savings from the large and more diverse group of non-regulated entities are crucial to achieving the EEPS and may include contributions from:

1. Federal, State and local building codes;
2. Federal and State appliance and equipment standards;
3. Non-profit environmental groups;
4. Faith based groups; and
5. Internal goals from large energy consumers such as: Military operations, State and County buildings, and State energy-related legislation.

C. EEPS Technical Working Group

The Commission will establish an EEPS Technical Working Group that represents both Commission regulated and non-regulated activities and programs.

The EEPS Technical Working Group should identify Contributing Entities and should encourage participation by representatives from each of the major categories described above in Section VI.A and B. The EEPS Technical Working Group will coordinate issues in the EEPS by making recommendations regarding prioritizing savings strategies for the portfolio, determining eligible measures and programs and revising goals as necessary.

The EEPS Technical Working Group will establish its operating procedures and meet on a regular basis to provide recommendations in support of the evaluation and policy process as necessary. Recommendations and findings provided by this group will be implemented at the discretion of the Commission.

The Commission will establish priorities for EM&V activities conducted by the EEPS EM&V Contractor, with input from the EEPS Technical Working Group.

VII. Tracking and Reporting Requirements and Timelines

The progress toward and achievement of the EEPS shall be reported on a regular basis. This reporting shall be provided to the Commission and will inform stakeholders in the EEPS, RPS, and IRP planning and implementation processes.

A. Reporting Entity and Functions

1. The Commission may select a provider, termed the EEPS Reporting Contractor to track and report the savings documented through the EM&V process. The selected entity shall be neutral to the outcome of the tabulated results and not engaged in administering penalties or incentives.
2. The EEPS Reporting Contractor may be required to perform the following tasks in reporting EEPS progress, including, but not limited to:

- a) Develop a reporting system that accommodates the Commission regulated and non-regulated programs and activities, as described in Section VI above.
- b) Review reported savings figures for overlap, continuity, clarity of assumptions and accuracy as an accounting check on the EEPS-related EM&V results prepared by other entities.

B. Reporting Schedule

- 1. The EEPS Reporting Contractor and the EEPS Technical Working Group shall propose to the Commission reporting schedules from each Contributing Entity taking into consideration factors such as alignment of existing reporting cycles necessary to develop integrated reporting and tracking for EEPS purposes.
 - a) Commission Regulated Entities
 - i. The PBFA and KIUC shall continue to file annual plans and report actual energy efficiency program impacts. These reports shall incorporate their respective contributions towards EEPS short and long range goals.
 - ii. Each utility shall also report annual estimated energy savings from efficiency-related activities, including, but not limited to: rate design, demand response, and transmission and distribution system improvements to the Commission or its designee.

b) Non-Regulated Entities

Non-regulated Entities that wish to contribute towards the EEPS may work with the EEPS Reporting Contractor to develop annual reporting requirements. In the case of activities that can be measured and reported only as multi-year savings or other such anomalies, the EEPS Reporting Contractor shall allocate savings such that they can be included with the Contributing Entities' savings reporting.

C. Criteria for Tracking and Reporting Savings

Energy savings reported by the utilities and the PBFA programs shall be in the form of gross kWh at the system level.⁴ Savings measured at the customer meter shall be converted using the total line and auxiliary losses specific to each utility. Transmission and distribution efficiencies shall also be reported as described above.

VIII. EEPS Evaluation, Measurement & Verification (EM&V)

A. Overview

1. EEPS EM&V shall develop estimates of energy savings in a manner that is defensible in regulatory and legislative proceedings.
2. EEPS EM&V shall also provide a summary of lessons learned from efficiency programs and activities implemented to assist with future program implementation.

⁴Gross energy savings measured at system level (including energy savings from reduced transmission and distribution losses).

3. EEPS EM&V may be conducted separately for Commission-regulated and non-regulated programs and activities. Results will be combined into overall reports with concurrent annual, five-year and summary reporting schedules per Table 1 above.

B. EEPS EM&V Principles

The overall approach to EEPS EM&V will be founded on two principles:

1. Contributing Entities are responsible for submitting estimates of expected savings from the proposed programs and activities (ex ante estimates), and subsequently documenting the savings achieved (ex post estimates).
2. The Commission may retain an EEPS EM&V Contractor to facilitate, review, conduct, adjust and compile EEPS EM&V (ex ante and ex post), as needed, for the EEPS, and to be available to assist Contributing Entities and the Commission with all aspects of EEPS EM&V.

C. EEPS EM&V Roles and Responsibilities

1. The Commission retains the right to review and approve all EEPS EM&V activities and adjust any EM&V results and any information resulting from EM&V.
2. Contributing Entities should provide the EEPS Reporting Contractor and EEPS EM&V Contractor with estimates of program savings goals and designs, EEPS EM&V plans and implementation results as available. The EM&V plans and results will be reviewed by the EEPS EM&V Contractor.
3. The EEPS EM&V Contractor will provide EM&V assistance to the Commission to support the EEPS.

4. The EEPS Technical Working Group may provide review and feedback on all aspects of EEPS EM&V, as needed, including but not limited to, all documents, plans and assumptions regarding ex ante and ex post EEPS EM&V, acceptable methods and approaches, prioritization of EEPS EM&V resources, and compilation of EEPS portfolio-wide results.

D. EEPS EM&V Funding

1. Contributing Entities are responsible for developing and funding EEPS EM&V to document the validity of their contributions.
2. To the extent that Contributing Entities desire and request assistance with any aspects of EEPS EM&V, the Commission's EEPS EM&V Contractor may be made available at the Commission's discretion.
3. The Commission is responsible for carrying out and funding the responsibilities relating to the EEPS as discussed in HRS § 269-96.

E. EEPS EM&V Planning

EEPS EM&V planning will be governed by several documents listed below.

1. EEPS EM&V Plan

The EEPS EM&V Plan shall contain EM&V principles, metrics, allowable approaches, net versus gross savings issues, reporting requirements, schedules, roles and other appropriate information. The EEPS EM&V Plan will articulate overarching approaches for several years, and therefore, will be more "fixed" than annual plans. It will set the expectations for the format and content of

the other EEPS EM&V documents and annual portfolio and statewide evaluation reports.

2. Annual EEPS EM&V Work Plan

This plan will include the major evaluation activities that will be conducted during the year, including EEPS EM&V activities and corresponding budgets, timeline and allocation of resources between programs, measures, and market sectors, as applicable.

3. Activity-Specific Research Plans

Activity-specific research plans may be developed on an as-needed basis and will describe in detail the EEPS EM&V that is planned to document a given activity or portfolio of activities.

4. EEPS Technical Reference Manual

The EEPS EM&V Contractor will maintain a database and a series of reports that track assumptions over time regarding measure-level and activity-level savings, measure life, baselines, and replacement assumptions. This documentation will reflect both the ex ante and ex post assumptions used to calculate metrics for the portfolio of activities that comprise the EEPS, and the EM&V activities and approaches used to develop and refine EEPS savings estimates. The EEPS Technical Reference Manual shall be based on existing technical documentation where practicable.

F. Metrics

Metrics to be evaluated and reported by EEPS EM&V may include, but are not limited to:

1. Gross energy savings at generation, which is the primary metric counting toward the EEPS goals. First-year, lifecycle and cumulative savings will be assessed and reported.

2. Free-ridership, which will be used, if needed, to inform program design and facilitate decisions necessary for limiting potential double-counting between savings from different EEPS activities.
3. Persistence, measure life, and expected lifetime for each activity, which will be employed in the calculation of first-year, lifecycle and cumulative savings, costs and benefits.
4. Baseline assumptions, which will be calculated or estimated using 2008 in situ energy consumption. For purposes other than EEPS, entities may be required to use alternative baselines (e.g., baselines for PBFA-funded activities are defined for each implementation cycle). This may entail tracking two types of impacts for certain activities - impacts from a 2008 baseline, and impacts from the baseline used for a given implementation cycle.
5. Participant and non-participant spillover, which are actions taken outside a particular program or activity that are determined to have been influenced by the implementation of that program or activity, and which may result in additional savings.
6. Market effects, which are energy savings caused over time, above and beyond any direct effects attributable to an energy efficiency program or activity.
7. Takeback and rebound - the increase of energy use arising due to perception or awareness that technologies have become efficient - can affect overall estimates of energy savings and will be measured.
8. Replacement, which includes evaluation regarding the technologies and practices that are assumed to replace a technology or

practice at the end of its lifetime and may be used to evaluate cumulative savings.

9. Implementation and administration costs, which include incentive costs, measure costs and other information necessary to support cost-effectiveness analyses.
11. Co-benefits of energy efficiency savings (such as greenhouse gas reductions, job creation, and other benefits resulting from EEPS activities), based on recommendations from the EEPS Technical Working Group.
10. Other metrics as recommended by the Technical Working Group and/or at the request of the Commission.

G. Allowable Approaches

Allowable approaches to EEPS EM&V shall be based on best practices, as articulated in nationally-recognized documents and protocols at the time the EEPS EM&V is undertaken. A range of approaches may be used. Rigor and precision levels for EEPS EM&V shall be determined within EEPS EM&V workplans, and shall balance best practices with the value of information, uncertainty and resource availability.

IX. Cost-effectiveness and Consumer Bill Impacts

A. Cost-effectiveness

1. Ratepayer funded efficiency activities shall be cost-effective when evaluating each yearly portfolio of savings by using the Total Resource Cost ("TRC") test. This test should be aligned as closely as possible with the supply side alternatives and include parity when examining incremental cost of measures as well as the use of net-to-gross factors.

2. Program portfolios must also pass the Utility/Administrator Cost test in order to ensure that the benefits ratepayers receive from these programs exceed the programs' cost. A real discount rate of 5% is appropriate for the societal benefit cost modeling of energy efficiency programs where risk is spread across the entire state. This rate may be revised by recommendation of the Technical Working Groups and subsequent approval by the Commission.

B. When using the TRC or the Utility/Administrator test, the PBFA and utilities shall include the following benefits and avoided costs:

1. Benefits

- a) Avoided electric energy benefits, calculated as the product of the portfolio's energy savings and an avoided energy cost.
- b) Avoided generation capacity benefits, calculated as the product of the portfolio's peak demand and an avoided capacity cost.
- c) Avoided transmission and distribution capacity benefits, calculated as the product of the program's reduction in peak demand and avoided transmission and distribution costs factors' respectively.
- d) Non-electric benefits such as economic development benefits, job creation, energy security benefits and a greenhouse gas benefit based on each ton of CO2 reduced may be used as determined and agreed upon in the EEPS Technical Working Group and reported to the Commission.

2. Avoided Costs

- a) Avoided cost figures should reflect renewable energy and capacity costs. Avoided costs should be in line with those determined in IRP plans. Final values may be proposed by the utilities and the EEPS Technical Working Group for reporting to the Commission at each five-year evaluation reporting period or as requested by the Commission.
- b) The utilities will calculate a range of avoided costs for the energy efficiency programs and activities. The EEPS Technical Working Group will determine the appropriate avoided cost values to use in evaluating the cost-effectiveness of such programs and activities and report these costs to the Commission.
- c) The utilities shall provide estimates of avoided transmission and distribution capital costs, and avoided transmission and distribution energy costs due to avoided line losses, for the energy efficiency programs and activities. The utilities shall use reasonable methods to estimate avoided transmission and distribution costs, which take into account the information, data and forecasts available to them, and the practical difficulties associated with determining such estimates. The utilities shall provide explanations of the methods used to determine the estimates, and shall refine such estimates as required to do so by the Commission.

B. Bill Impacts

Bill and rate impacts must be considered when setting EEPS interim goals. The EEPS Technical

Working Group should work with the Consumer Advocate to address energy efficiency bill-related issues, in particular for Commission-regulated programs and activities. All annual and five-year reporting shall discuss short and long term bill impacts for each customer class, categorized as follows:

1. Non-participants, which are ratepayers that do not participate in energy efficiency programs and activities.
2. Participants, which are ratepayers that participate in energy efficiency programs and activities.
3. Rate class totals, which indicate the effect of efficiency savings across the ratepayer class as a whole.

X. Funding, Incentives and Penalties

A. Funding for Programs and Activities Under Commission Jurisdiction

Funding for PBF-administered and utility-funded energy efficiency programs should be re-evaluated by the EEPS Technical Working Group regularly or at each five-year evaluation period to determine if it is sufficient to meet State energy goals.

B. Incentives and Penalties

1. The existing PBFA model of performance based withholding and a small incentive for exceeding target goals should continue for the current contract term. Revised incentive mechanisms may be proposed by the EEPS Technical Working Group for future PBFA contracts. Any changes to incentive mechanisms will be at the discretion of the Commission. Goals associated with PBFA penalties and incentives will continue to be determined by the Commission, with input from the EEPS Technical Working Group.

2. Upon completion of any updated potential studies, adequate information is expected to be available to determine if firmer goals for future performance period(s) should be established. In addition, the Commission may determine whether penalties for not reaching these goals are necessary.

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

JEFFREY T. ONO
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

DEAN MATSUURA
MANAGER, REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
LAUREN M. IMADA-LEE, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813

Counsel for KAUAI ISLAND UTILITY COOPERATIVE

ESTRELLA A. SEESE
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM
P.O. Box 2359
Honolulu, HI 96804

H. RAY STARLING
PROGRAM MANAGER
HAWAII ENERGY EFFICIENCY PROGRAM
1132 Bishop Street, Suite 1800
Honolulu, HI 96813

Certificate of Service - Continued
Page 2

DANIEL W.S. LAWRENCE
DEPUTY CORPORATION COUNSEL
DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 South King Street, Room 110
Honolulu, HI 96813

Counsel for CITY AND COUNTY OF HONOLULU

BRIAN T. MOTO, ESQ.
DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 South High Street
Wailuku, Maui, HI 96793

Counsel for COUNTY OF MAUI

ALFRED B. CASTILLO, JR., ESQ.
MONA W. CLARK, ESQ.
OFFICE OF THE COUNTY ATTORNEY
COUNTY OF KAUAI
4444 Rice Street, Suite 220
Lihue, HI 96766-1300

Counsel for COUNTY OF KAUAI

LINCOLN S.T. ASHIDA, ESQ.
DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF HAWAII
101 Aupuni Street, Suite 325
Hilo, HI 96720

Counsel for COUNTY OF HAWAII

WARREN S. BOLLMEIER II, PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place 3816
Kaneohe, HI 96744

Certificate of Service - Continued
Page 3

MARK DUDA
PRESIDENT
HAWAII SOLAR ENERGY ASSOCIATION
P.O. Box 37070
Honolulu, HI 96837

SCHLACK ITO LLC
DOUGLAS A. CODIGA, ESQ.
Topa Financial Center
745 Fort Street, Suite 1500
Honolulu, HI 96813

Counsel for BLUE PLANET FOUNDATION

Appendix 5

		TASK 1	TASK 2	TASK 3				
ENERGY EFFICIENCY POTENTIAL STUDY Proposal Budget p. 1 -- LABOR								
		Workplan	Implement Workplan	Proj. Man.	TOTAL HOURS	TOTAL COST	PERCENT LABOR BUDGET	PERCENT OVERALL BUDGET
	RATE	HOURS						
LABOR								
Prime Contractor Firm Name								
Name 1, role								
Name 2, role								
Name 3, role								
etc.								
Prime Contractor Subtotal Hours	--							
Prime Contractor Subtotal Cost	--							
Subcontractor 1 Firm Name								
Name 1, role								
Name 2, role								
Name 3, role								
etc.								
Subcontractor 1 Subtotal Hours	--							
Subcontractor 1 Subtotal Cost	--							
Subcontractor 2 Firm Name								
Name 1, role								
Name 2, role								
Name 3, role								
etc.								
Subcontractor 2 Subtotal Hours	--							
Subcontractor 2 Subtotal Cost	--							
TOTAL LABOR HOURS	--							
TOTAL LABOR COST	--							

(NOTE THAT TOTAL COST IS ON THE NEXT SHEET)

		TASK 1	TASK 2	TASK 3				
			SUBTASK 2.1					
ENERGY EFFICIENCY POTENTIAL STUDY Proposal Budget p. 2 NON-LABOR (and TOTAL)		Workplan	Implement Workplan	Proj. Man.	TOTAL HOURS	TOTAL COST	PERCENT LABOR BUDGET	PERCENT OVERALL BUDGET
	RATE/ea							
MATERIALS AND OTHER (INCLUDING LICENSES IF NEEDED)	--							
Item 1								
Item 2								
Etc.								
SUBTOTAL MATERIALS AND OTHER	--							
TRAVEL	--							
Itemize								
SUBTOTAL TRAVEL								
SUBTOTAL LABOR + NON-LABOR	--							
TOTAL COST (ALL COSTS)								

Notes: